Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ____

In The

Supreme Court of the United States

ALLIED HOME MORTGAGE CAPITAL CORP.
AND THE YELLOW SIGN COMPANY,
Petitioners,

v.

LARRY CORRALES,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Texas

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PETITION FOR WRIT OF CERTIORARI

MURPHY S. KLASING
Counsel of Record
SARAH WEBER LANGLOIS
MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.
3200 ONE HOUSTON CENTER
1221 MCKINNEY STREET
HOUSTON, TEXAS 77010
(713) 615-8500
mklasing@mcginnislaw.com;
slanglois@mcginnislaw.com

Counsel for Petitioners Allied Home Mortgage Capital Corp. and The Yellow Sign Company

March 9, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED FOR REVIEW

Question 1: Did the trial court err by denying Petitioners' motion to compel arbitration under the Federal Arbitration Act ("FAA") and by failing to follow this Court's precedent that arbitration clauses are "'separable' from the contracts in which they are embedded" (*Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006)) and that the language of the arbitration provision – not a separate scope provision in the underlying contract – defines the scope of arbitrable disputes under the FAA (*E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002))?

Question 2: Under the FAA, does a separate scope provision in an underlying agreement that also contains a broad arbitration clause limit the scope of the agreement to arbitrate?

IDENTITY OF PARTIES

The parties to this proceeding are:

PETITIONERS:

Allied Home Mortgage Capital Corp.

The Yellow Sign Company

RESPONDENT:

Larry Corrales

CORPORATE DISCLOSURE STATEMENT

In accordance with Rule 29.6 of the Rules of the Supreme Court of the United States, Petitioners disclose that Allied Home Mortgage Capital Corp. and The Yellow Sign Company are privately held companies. No parent or publicly held company owns 10% or more of Allied Home Mortgage Capital Corp.'s stock or The Yellow Sign Company.

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ORDERS BELOW

The *Order* denying Relators' Petition for Writ of Mandamus by the Supreme Court of Texas, *In re Allied Home Mortgage Capital Corp.*, No. 09-0691, ___ S.W.3d ___ (Nov. 20, 2009), is included in Appendix A.

The *Memorandum Opinion, issued per curiam, In re Allied Home Mortgage Capital Corp.*, No. 02-09-00101-CV, ___ S.W.3d ___ (June 16, 2009) (Justices C.J. Cayce, Gardner, and JJ. McCoy), denying Relators' Petition for Writ of Mandamus by the Second District Court of Appeals of Texas is included in Appendix B.

The *Order* denying Defendants' Motion to Compel Arbitration by the Hon. Thomas Wilson Lowe, Judge, 236th District Court of Tarrant County, Texas, on March 5, 2009 is included in Petitioners' Appendix ("Appendix") C.

The *Order* denying Relators' Motion for Rehearing En Banc of Petition for Writ of Mandamus by the Supreme Court of Texas, *In re Allied Home Mortgage Capital Corp.*, No. 09-0691, ___ S.W.3d ___ (Jan. 8, 2010), is included in Appendix D.

JURISDICTION

The 236th District Court of Tarrant County, Texas denied Petitioners' motion to compel arbitration on March 5, 2009.[1] The Second District Court of Appeals of Texas denied Petitioners' petition for writ of

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[1] *Appendix C.*

mandamus on June 16, 2009.[2] The Supreme Court of Texas denied Petitioners' petition for writ of mandamus on November 20, 2009.[3] The Supreme Court of Texas denied Petitioners' Motion for Rehearing En Banc of Petition for Writ of Mandamus on January 8, 2010.[4]

This Court has jurisdiction under 28 U.S.C. § 1257(a).

PERTINENT STATUTORY PROVISIONS

The Federal Arbitration Act, 9 U.S.C. § 2, provides, in pertinent part:

> A written provision in...a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

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[2] *Appendix B.*

[3] *Appendix A.*

[4] *Appendix D.*

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

Respondent Larry Corrales ("Corrales") was hired by Allied Home Mortgage Capital Corp. ("Allied") on December 5, 2002 as a branch manager under a written employment contract containing a broad arbitration clause.[5] In 2004, Respondent took on the additional role of Vice-President of The Yellow Sign Company ("Yellow Sign"), which included being in charge of an Allied computer site and program called "For Sale By Owner."[6] In 2006, the Allied branch that Respondent managed closed, but Respondent remained subject to the terms and conditions of his employment agreement with Allied.[7]

Respondent was terminated from employment, for cause, on March 5, 2007.[8]

The broad arbitration clause included in the written employment agreement[9] states:

> **Disputes Subject to Arbitration.** ...Employee agrees that any dispute, controversy, claim, or difference between Employer and Employee

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[5] *Appendix G, Exh. 2.*

[6] *Appendix G, Exh. 1; G, Exh. 3; G, Exh. 4.*

[7] *Appendix G, Exh. 1,* ¶ 7; *Appendix J* at 19:9.

[8] *Appendix G, Exh. 1; G, Exh. 4.*

[9] *Appendix F, G.*

> which directly or indirectly relates to or arises out of this Agreement, or its breach, shall be subject to arbitration....The types of disputes or controversies intended by the parties to be subject to arbitration shall include, but not be limited to, (i) any claim which directly or indirectly relates to or arises out of this Agreement,... and (iv) any and all causes of action that involve or relate to Title VII or applicable state or local laws, for discrimination because of...handicap or disability....[10]

B. PROCEEDINGS BELOW

Notwithstanding the broad arbitration clause, which explicitly states that disability discrimination causes of action are subject to arbitration, Respondent sued Petitioners Allied and Yellow Sign under Texas Labor Code § 21.051 *et seq.* for disability discrimination in Texas state court in July 2008.[11] Petitioners promptly sought to compel arbitration under the FAA pursuant to the broad arbitration clause.

In response to Petitioners' motion to compel arbitration, Respondent asserted several defenses; the gravamen of Respondent's argument is that the scope provision in the employment agreement limits the broad arbitration clause to the scope of his work as an Allied branch manager and does not cover his role as Vice-President of Yellow Sign. Stated differently,

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[10] *Appendix G, Exh. 2.*

[11] *Appendix E.*

Respondent argued that the employment agreement was not applicable to his state-court claims because the scope provision included in the underlying contract governed the arbitration provision.[12] Relying upon U.S. Supreme Court authority, Petitioners contend that the arbitration provision is autonomous from the employment contract and that the language of the arbitration provision – not the separate scope provision in the underlying contract – defines the scope of arbitrable disputes under the FAA. [13] The trial court summarily denied the motion, wholly ignoring this Court's clearly established precedent.[14]

Petitioners appealed the trial court's order to the Second District Court of Appeals of Texas, but the appellate court denied the petition for writ of mandamus on June 16, 2009.[15] Petitioners immediately sought relief from the Supreme Court of Texas; however, the Texas Supreme Court denied the petition for writ of mandamus on Nov. 20, 2009 and subsequently denied the motion for rehearing en banc on January 8, 2010.[16]

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[12] *Appendix H.* The scope provision included in the underlying employment agreement defines the scope of employment and does not mention the arbitration agreement.

[13] Petitioners rely on *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006) and *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002). *See Appendix G; Appendix I.*

[14] *Appendix C.*

[15] *Appendix B.*

[16] *Appendix A & D.*

ARGUMENT

A. The trial court ignored established Supreme Court precedent in denying Petitioners' motion to compel arbitration.

The trial court below, by denying Petitioners' motion to compel arbitration under the FAA, wholly disregarded U.S. Supreme Court precedent interpreting the FAA. Consequently, this Court should grant the petition for writ of certiorari.

Since 1967, the law has been clear that unless parties intend otherwise,[17] "arbitration clauses as a matter of federal law are 'separable' from the contracts in which they are embedded."[18] At the trial court below, Respondent argued, and the trial court agreed, that Respondent's claims are not covered by the parties' arbitration agreement because the scope provision included in the underlying employment agreement limits the arbitration agreement's reach.[19]

By denying Petitioners' motion to compel arbitration and finding that the arbitration agreement hinges on the applicability of the separate scope provision in the underlying agreement, the trial court

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[17] Here, it is clear that the parties intended to arbitrate "**any** dispute, controversy, claim, or difference between Employer and Employee which **directly or indirectly relates to or arises out of this agreement**." *Appendix G, Exh. 2.*

[18] *Prima Paint Corp. v. Flood & Conklin Manuf. Co.*, 388 U.S. 395, 402 (1967).

[19] *Appendix H.*

ignored the U.S. Supreme Court's explicit pronouncement that **"as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract...."**[20] Based on this clear precedent, Respondent's argument that the scope provision included in the underlying agreement governs the arbitration provision must fail, as the arbitration provision is severable from the remainder of the underlying contract and its scope provision.

This Court has expressly declared that it "favor[s]...the separate enforceability of arbitration provisions."[21] The Fifth Circuit Court of Appeals, applying this Court's *Prima Paint* decision, concluded that "under *Prima Paint* and the structure and content of the arbitration clause [at issue], the clause should be considered 'separable' and any alleged finding of fraudulent inducement does not taint the validity of the arbitration clause as a whole or its confidentiality provision in particular."[22]

The trial court's interpretation of the FAA that the scope provision of the underlying agreement limits the

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[20] *Buckeye Check Cashing, Inc.*, 546 U.S. at 445-46 (emphasis added) (finding that *Prima Paint* applies in state and federal courts and concluding "that because respondents challenge the Agreement, but not specifically the arbitration provisions, those provisions are enforceable apart from the remainder of the contract").

[21] *Buckeye Check Cashing, Inc.*, 546 U.S. at 449.

[22] *ITT Educational Services, Inc. v. Arce*, 533 F.3d 342, 346-47 (5th Cir. 2008).

arbitration clause is inherently flawed since the arbitration clause is severable from the underlying agreement. Stated differently, the scope provision does not taint the validity or application of the arbitration agreement. Consequently, the arbitration agreement should be enforced separate and apart from the scope provision, as is dictated by this Court.[23]

The trial court also grossly deviated from this Court's established precedent that absent some ambiguity in the parties' contract,[24] **the language of the arbitration agreement defines the scope of arbitrable disputes under the FAA**.[25] The trial court below ignored this clear interpretation of the FAA and this Court's authority that the arbitration agreement itself – not a separate scope provision in the underlying agreement – defines the parameters of arbitrable disputes.

The arbitration clause here is a broad arbitration clause, stating that "any dispute, controversy, claim, or difference between Employer and Employee which directly or indirectly ***relates to or arises out of*** this Agreement...shall be subject to arbitration...."[26]

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[23] *See Buckeye Check Cashing, Inc.*, 546 U.S. at 449.

[24] There is no allegation in this case that any ambiguity exists in the parties' contract. *See generally Appendixes E, H, & J.*

[25] *See Waffle House, Inc.*, 534 U.S. at 289.

[26] *See Appendix G, Exh. 2, labeled Allied/Corrales 4.* Respondent's alleged disability discrimination claim is covered by the parties' broad arbitration clause, because in addition to the broad arbitration agreement, the agreement specifically states that "[t]he types of disputes or controversies intended by the

Broad arbitration clauses like the one here include not only those claims that literally arise under the contract but also all disputes between parties "having a significant relationship to the contract regardless of the label attached to the dispute."[27]

A trial court should not be permitted to erroneously interpret the FAA as to permit a party to wholly avoid its agreement to arbitrate by claiming that a scope provision in the underlying contract trumps a broad arbitration agreement. Such a consequence directly conflicts with federal law, which strongly favors arbitration.[28]

The granting of this petition for writ of certiorari is necessary to remedy the trial court's deviation from Supreme Court precedent.

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parties to be subject to arbitration **shall** include...any and all causes of action that involve or relate to...disability." *See also Pennzoil Exp. and Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061, 1067 (5th Cir. 1998) (explaining that an arbitration clause is broad when the clause's language requires arbitration of "any dispute that arises out of or relates to" the agreement or disputes that are "in connection with" the agreement).

[27] *Pennzoil Exploration and Prod. Co.*, 139 F.3d at 1067.

[28] *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

B. The Finite Issue of whether a Scope Provision in an Underlying Contract Containing a Broad Arbitration Agreement limits the Arbitration Agreement is an Unsettled Question of Federal Law.

The Court should grant this petition for writ of certiorari because this case presents the rare opportunity to answer an unsettled question under the FAA. Currently, the finite issue of whether a scope provision in an underlying contract containing a broad arbitration clause limits the scope of the agreement to arbitrate is unanswered by federal law.

As explained above, this Court's precedent is clear that arbitration agreements are separable from the underlying contract[29] and that the language of the arbitration agreement defines the scope of arbitrable disputes under the FAA.[30] However, this precedent has not been applied in the context of a party seeking to avoid arbitration arguing – and the trial court agreeing – that a scope provision in the underlying contract limits the scope of the arbitration clause. Consequently, the question remains how courts in the United States will interpret and apply Supreme Court precedent in this situation.

Granting this petition for writ of certiorari will allow the Court to pronounce a definitive answer to this unsettled question of federal law.

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[29] *Buckeye Check Cashing*, 546 U.S. at 445-46.

[30] *Waffle House, Inc.*, 534 U.S. at 289.

PRAYER FOR RELIEF

For these reasons, Petitioners respectfully request that this Court grant their Petition for Writ of Certiorari and order the trial court, Judge Tom Lowe, to vacate the order denying Petitioners' motion to compel arbitration and to order the parties to proceed to arbitration. Petitioners also request any other relief to which they may show themselves to be justly entitled.

Respectfully submitted,

Murphy S. Klasing
Counsel of Record
Sarah Weber Langlois
MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010
(713) 615-8500
mklasing@mcginnislaw.com;
slanglois@mcginnislaw.com

Counsel for Petitioners Allied Home Mortgage Capital Corp. and The Yellow Sign Company

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APPENDIX A

The Supreme Court of Texas

Orders Pronounced November 20, 2009

THE FOLLOWING PETITIONS FOR WRIT OF MANDAMUS ARE DENIED:

09-0691 IN RE ALLIED HOME MORTGAGE CAPITAL CORP.; from Tarrant County; 2nd district (020-09-00101-CV, __ SW3d __, 06-16-09)

APPENDIX B

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-09-101-CV

[Delivered June 16, 2009]

IN RE ALLIED HOME MORTGAGE CAPITOL CORP. AND THE YELLOW SIGN COMPANY

RELATORS

ORIGINAL PROCEEDING

MEMORANDUM OPINION[1]

The court has considered relators' petition for writ of mandamus and is of the opinion that relief should be denied. Accordingly, relators' petition for writ of mandamus is denied.

Relators shall pay all costs of this original proceeding, for which let execution issue.

PER CURIAM

[1] *See* Tex. R. App. P. 47.4

PANEL: CAYCE, C.J.; GARDNER and MCCOY, JJ.

DELIVERED: June 16, 2009

APPENDIX C

IN THE DISTRICT COURT
OF TARRANT COUNTY, TEXAS
236th JUDICIAL DISTRICT

CAUSE NO. 236-231317-08

[Signed March 10, 2009]

LARRY CORRALES	)
	)
ALLIED HOME MORTGAGE	)
CAPITAL CORP., and THE YELLOW	)
SIGN COMPANY	)
	)

ORDER DENYING DEFENDANTS' MOTION TO TRANSFER VENUE AND MOTION TO COMPEL ARBITRATION

On March 5, 2009 came on to be heard Defendants Allied Home Mortgage Capital Corporation and The Yellow Sign Company's Amended Motion to Transfer Venue and Motion to Compel Arbitration. After hearing arguments of counsel and considering the pleadings on file, the Court is of the opinion that Defendants' Motion to Transfer Venue and Motion to Compel Arbitration should be denied.

IT IS THEREFORE ORDERED that Defendants' Amended Motion to Transfer Venue is DENIED.

IT IS FURTHER ORDERED that Defendants' Motion to Compel Arbitration is DENIED.

SIGNED this 10 day of March, 2009.

/s/ _____
Judge Presiding

AGREED AS TO FORM:

/s/ _____
Susan E. Hutchison, Attorney for Plaintiff

/s/ _____ -- approved as to form only
Murphy S. Klasing, Attorney for Defendants

APPENDIX D

The Supreme Court of Texas

Orders Pronounced January 8, 2010

THE MOTION FOR REHEARING OF THE FOLLOWING PETITION FOR WRIT OF MANDAMUS IS DENIED:

09-0691 IN RE ALLIED HOME MORTGAGE CAPITAL CORP.; from Tarrant County; 2nd district (020-09-00101-CV, __ SW3d __, 06-16-09)

APPENDIX E

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
____ JUDICIAL DISTRICT

CAUSE NO. 236 231317 08

[Filed July 11, 2008]

LARRY CORRALES,	)
Plaintiff	)
	)
V.	)
	)
ALLIED HOME MORTGAGE	)
CAPITAL CORP., and THE YELLOW	)
SIGN COMPANY,	)
Defendants	)
	)

PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Larry Corrales and files this Plaintiff's Original Petition against Defendants, in support of which would respectfully show the Court the following:

1. This is a Level 2 case pursuant to TEX. R. CIV. P. 190.1, 190.3.

2. Plaintiff is an individual.

3. Defendant Allied Home Mortgage Capital Corporation is a Texas corporation that may be served with process through its registered agent, CT Corporation Systems, 350 N. St. Paul Street, Dallas, Texas 75201.

4. Defendant The Yellow Sign Company is a Texas corporation that may be served with process through its registered agent, CT Corporation Systems, 350 N. St. Paul Street, Dallas, Texas 75201.

5. Venue is proper in Tarrant County as the county in which all or part of the events giving rise to the cause of action occurred. Corrales was employed by Yellow Sign Company to work out of his home in Arlington, Tarrant County, Texas. He was wrongfully terminated from his job in Arlington, Tarrant County, Texas.

6. Corrales was hired as Vice President of The Yellow Sign Company. He created training tools for the Yellow Sign program and part of his responsibilities included placing such information on the web portal website for the company so that the loan officers and managers could download some of Larry's tips and training aids during the day, after hours and weekends. The idea to create a portal so that training material from Larry could be downloaded came from Larry Corrales (there has never been any form of detailed training available this way). He had full access to the training information and full authority to modify it. Corrales, a known expert in the For Sale By Owner marketing niche, incorporated his expertise and tools he created previously in his career

into a custom program for Yellow Sign and trained the Allied branches, via telephone seminar three times a day or in person, on how to use this niche program to help them increase productivity and increase business relationships with more realtors, builders and consumer relations. Corrales had full authority to add and adjust as needed in order to make the program work coast to coast. He received numerous accolades on the impact of his ability to train these branches with his expertise in this part of mortgage origination.

7. Corrales was fully authorized as Vice President for Yellow Sign to undertake whatever measures were necessary for a successful Yellow Sign operation. Before Corrales took over the position as stated, all that the loan officer had was a website that needed much improvement. Corrales also suggested implementation of better tools and the look of the website where the loan officer could also download training tips from Corrales.

8. Corrales was successful in his operation of the Yellow Sign program. He increased profit margins for Yellow Sign beyond its past record standings by increasing Allied Branch memberships. Allied Branches were charged $100.00 per month and had full access to the new and improved website and training aids as well as live telephone seminars with Corrales. In addition to those duties listed above Corrales prepared weekly and monthly reports to accounting for budget management and monthly branch orientation speeches on the program. Corrales flew around the country to train and audit some branches that were in trouble with the state regulatory agencies. Corrales was also responsible for the compliance of the Yellow Sign in every state, including

compliance with applicable real estate laws as well as loan originator rules and regulations

9. In November 2006, Corrales was diagnosed with a brain tumor. Prior to that time, Corrales had been promised a bonus based upon his excellent work performance. Corrales had to have brain surgery and the bonus never materialized.

10. Corrales had brain surgery on January 11, 2007. on February 26, 2007, Corrales was released to work light duty. He had substantial problems with his vision following his brain surgery, but was able to perform the essential functions of his job, with or without accommodation. Although he requested computer software that would assist him with his vision impairment, the company refused to provide it. Even so, Mr. Corrales could perform his essential functions.

11. Upon his return to work at Yellow Sign Company, Corrales began to work to update the training information on the website. The company, obviously looking for an excuse to get rid of Corrales, terminated him for allegedly unauthorized removal of information from the web portal website. Their alleged reason for termination is obviously pretextual, as a significant portion of Corrales' job duties included creating, editing and updating training material for the Yellow Sign program.

12. Based upon the events as outlined above, Plaintiff sues Defendant pursuant to the provisions of the Texas Labor Code, Section 21.051 et. seq., including but not limited to those provisions relating to disability discrimination. Pursuant to the provisions

of the Texas Labor Code, Section 21.2585, Plaintiff seeks back pay and compensatory damages in an amount in excess of the jurisdictional limits of this Court as well as front pay in lieu of reinstatement and loss of future earnings. Furthermore, Defendant acted with reckless indifference to the rights of Plaintiff and Plaintiff is entitled to punitive damages in an amount in excess of the jurisdictional limits of this Court.

13. Furthermore, pursuant to Texas Labor Code, Section 21.259, Plaintiff seeks reasonable attorneys' fees and costs, including reasonable expert fees.

14. All jurisdictional prerequisites for the filing of this cause of action have been met, including the processing of administrative charges, the receipt of notice of right to sue and timely filing of suit thereafter. The charge was filed with the Equal Employment Opportunity Commission and the Texas Commission on Human Rights on June 11, 2007. Plaintiff received a notice of right to sue from the Texas Commission on Human Rights on July 3, 2008. Suit is being filed on July 9, 2008, which is within 60 sixty days from the receipt of the notice of right to sue and within two years of the date that the charge was filed.

15. Corrales was Vice President for Yellow Sign Company and was fired by Yellow Sign Company from that position. Corrales sues Allied under the theory of "integrated enterprise" in that there was common management, ownership, control and human resources functions between the companies.

16. Plaintiff prays for a jury trial.

CLAIM NOT SUBJECT TO ARBITRATION

17. Plaintiff attaches to this pleading a copy of an Employment Agreement between Larry Corrales as "Branch Manager" for Allied Home Mortgage Capital Corp. and Allied. The Arbitration agreement is specifically directed to the agreement between Allied and Corrales as Branch Manager for Allied. Subsequent to this agreement, Corrales was hired by Yellow Sign Company as Vice President. There was NO employment agreement or arbitration agreement applicable to the employment of Corrales by Yellow Sign Company in his capacity as Vice President. When Corrales was fired, he was fired from his position as Vice President of Yellow Sign Company, NOT as Branch Manager for Allied. Thus, there is no applicable arbitration agreement that precludes this litigation.

FOR THE REASONS STATED, Plaintiff prays that this matter be set for jury trial and that upon trial, Plaintiff recovers damages as outlined in excess of the jurisdictional limits of this Court, attorneys' fees, costs, including reasonable expert fees, pre-judgment and post-judgment interest as allowed by law and such further relief to which Plaintiff may be entitled.

REQUEST FOR DISCLOSURE TO DEFENDANTS

TO DEFENDANTS: Pursuant to Rule 194, you are requested to disclose, within 50 days of service of this request, the information or materials described in Rule 194.2.

Respectfully submitted,

BY: /s

SUSAN E. HUTCHISON
State Bar No. 10354100

FOREMAN, LEWIS & HUTCHISON, P.C.
611 S. Main Street,
Westwood Centre, Suite 700
Grapevine, Texas 76051
(817) 336-5533
FAX: (817) 336-9005

ATTORNEYS FOR PLAINTIFF

APPENDIX F

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
236TH JUDICIAL DISTRICT

CAUSE NO. 236-231317-08

[Filed August 11, 2008]

LARRY CORRALES	)
	)
VS.	)
	)
ALLIED HOME MORTGAGE CAPITAL CORP., and THE YELLOW SIGN COMPANY	)

DEFENDANTS' MOTION TO TRANSFER VENUE AND ORIGINAL ANSWER SUBJECT THERETO

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Allied Home Mortgage Capital Corporation and The Yellow Sign Company hereby file their motion to transfer venue and original answer subject to the motion to transfer venue in response to the original petition filed by Plaintiff, Larry Corrales, and in support thereof would show the following:

I. Motion to Transfer Venue

Defendants specifically deny each and every venue fact pled in Plaintiff's original petition.

Defendants more specifically deny that Larry Corrales was employed in any capacity by The Yellow Sign Company. The Yellow Sign Company has no employees. Mr. Corrales was employed by Allied from December 13, 2007 to March 5, 2007 as a branch manager of one of Allied's many branch offices. Mr. Corrales signed an employment agreement with Allied in 2002 which clearly states that any dispute shall be heard in Houston, Harris County, Texas and subject to arbitration. See Exhibit 1. At all times relevant to this cause of action, Mr. Corrales was paid by Allied Home Mortgage Capital Corporation. He never received any compensation from The Yellow Sign Company. His form W-2 wage and tax statements for every year between 2002 and2007 show his employer to be Allied Home Mortgage Capital Corporation.

In 2004, Mr. Corrales was given additional compensation for being in charge of an Allied Home Mortgage Capital Company computer site and program called For Sale By Owner. He was nevertheless still subject to the terms and conditions of his employment agreement which he violated resulting in his termination.

Further, Defendants' principal places of business and main offices are located at 6110 Pinemont, Houston, Harris County, Texas. Mr. Corrales was hired and terminated through the Houston Office of Allied located in Harris County, Texas.

Pursuant to §§15.002(1), (3) and 15.035 of the Texas Civil Practice and Remedies Code this matter must be transferred to a county of proper venue which is Harris County, Texas.

II. Original Answer subject to Motion to Transfer Venue

Defendants generally deny each and every factual allegation contained within Plaintiff's Original Petition and hereby demand strict proof thereof.

Defendant, The Yellow Sign Company further pleads that Plaintiff has no right of recovery against it as it did not employ Plaintiff, nor did it take any action to terminate the employment of Plaintiff with Allied Home Mortgage Capital Corporation.

Plaintiff's claims are barred by the applicable statute(s) of limitations.

Although Defendants deny that Plaintiff has any right of recovery, should a judgment be signed against Defendants that includes punitive damages, such damages are limited to no more than $300,000 as to Allied Home Mortgage Capital Corporation and $50,000 as to The Yellow Sign Company.

THEREFORE, Defendants pray that plaintiff take nothing by reason of his suit and that Defendants recover their costs of court and for any other relief that Defendants may show themselves to be justly entitled.

Respectfully submitted,

McGinnis, Lochridge & Kilgore, L.L.P.

By: /s/_____

Murphy S. Klasing
State Bar of Texas # 00791034
1221 McKinney, Suite 3200
Houston, Texas 77010
(713) 615-8536
(713) 615-8585 Fax
email: mklasing@mcginnislaw.com

ATTORNEYS FOR DEFENDANTS

[certificate of service omitted]

EXHIBIT 1

THIS EMPLOYMENT AGREEMENT IS SUBJECT TO ARBITRATION. BY SIGNING THIS EMPLOYMENT AGREEMENT, YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL FOR CERTAIN CLAIMS. PLEASE READ CAREFULLY.

EMPLOYMENT AGREEMENT
(Branch Manager)

THIS EMPLOYMENT AGREEMENT ("Agreement") signed this 5 day of December, 2002 ("Effective Date"), by and between ALLIED HOME MORTGAGE CAPITAL CORPORATION, a Texas Corporation ("Employer"), and LARRY CORRALES ("Employee"). Unless otherwise and provided herein, Employer, as defined above, shall mean both ALLIED HOME MORTGAGE CAPITAL CORPORATION and any such successor(s) or assign(s) that assumes and agrees to perform this Agreement, by operation of law or otherwise.

Employment. On the terms and subject to the conditions of this Agreement, Employer hereby employs and engages the services of Employee to serve as, and Employee agrees to diligently and competently serve as, and perform the functions of Branch Manager.

Term. Employee and Employer agree that this employment shall be "at will" and that this Agreement does not contain or constitute a guarantee of employment for any specific period. At any time and for any reason, Employer may terminate Employee's employment with or without cause or notice other than

as required by law. Employee may resign or terminate his/her employment, but acknowledges that, if he/she resigns, the Employer will need a certain period of time to locate a replacement. Accordingly, Employee will give at least two week's notice prior to resignation; however, Employer, at its absolute discretion, may instruct Employee to leave earlier, and if so instructed, Employee shall do so and his/her employment shall end as of such earlier date designated by Employer.

Scope of Employment. Employee shall have the duties and responsibilities associated with the position of Branch Manager. Employee shall be responsible for operating a branch office, including but not limited to, originating, negotiating, securing, processing and administering the closing of loans as directed by Employer and shall perform any other duties set forth herein or requested by Employer. As a Branch Manager, Employee shall be responsible for managing the day-to-day operations of the branch office where Employee is employed. Employee shall be responsible for ensuring that such branch office complies with all applicable federal, state and local statutes and regulations, and Employer's policies, procedures and programs.

Employee is not authorized, absent prior written approval by Employer, to engage in or perform any act or action contrary to company policies or procedures, including without limitation: (i) to make or issue any loan commitment (other than lock loans with investor and lock loans with borrowers in accordance with company policies and procedures); (ii) to enter into or make (a) employment agreements; (b) lease agreements, (c) banking or financial arrangements or agreements, such as business loans or lines of credit,

(d) purchases in excess of $1,000.00 in the aggregate during any calendar month, (e) agreements for the purchase or lease of office equipment; (iii) to issue forward loan commitments; (Employer will issue, subject to its sole discretion, all forward loan commitments in accordance with company policies and procedures) (iv) to place any advertising, in any medium; (Employee agrees and acknowledges that he or she is prohibited from placing or running any advertising in the name or for the benefit of Employer or a branch office without prior written approval); (v) to use the name "Allied" except in connection with Employer's business and, under all circumstances, is not authorized to use the name after termination or (vi) to hire or fire any personnel employed in the branch office.

Employee further agrees and acknowledges that he or she will not open, attempt to open, operate or attempt to operate, any bank account in Employer's name, or any similar name, and that all monies received by Employee for Employer or on Employer's behalf are funds of Employer and will be made payable to Employer; and all such monies are held in trust and shall be delivered immediately to Employer, all in accordance with company policies and procedures.

Compensation. As and for compensation as a Branch Manager, Employer shall pay Employee a Commission equal to the Net Profit of the branch managed by Employee, subject to all applicable laws, rules and regulations, including without limitation, RESPA, HUD regulations and mortgagee letters, and state law restrictions. Net Profit, as contemplated herein, shall be calculated as follows: Gross Revenues from loan originations, minus all Branch Operating Expenses.

Gross Revenues shall mean all monies earned through originating, negotiating, securing, processing and administering the closing of mortgage loans directly attributable to the operations of the branch office during the applicable period, computed as follows: an amount, equal to one of the following (at the choice of Employer depending on the type of loan), (i) the "Wholesale Pricing Premium," (ii) the forward loan commitment fee collected, or (iii) the fee for locking a loan rate, if any, up to the FNMA/FHLMC conforming loan limit on each loan closed; in each case less any investor charges or fees, and less thirty (30) basis points of the loan amount. The "Wholesale Pricing Premium" is the rate above par value of the loan as quoted by Employer in its daily pricing sheets, or as determined by any other company with which Employer is approved to sell loans and through which such loan is closed. Branch Operating Expenses shall mean all expenses and fees actually incurred by the branch office from operations during the preceding calendar month. Branch Operating Expenses are contemplated to include, but may not be limited to, branch salaries and payroll expenses, the branch office lease payment, telephone charges, long distance, facsimile costs, equipment purchases and fees, supplies, advertising, insurance, association or license fees, government license fees, audit fees, accrued expenses and amounts specified in the Employer's policies and procedures; which items, in each case, are permitted under applicable HUD regulations and mortgagee letters.

Employee shall be paid the Commission less all applicable taxes, including FICA and Social Security, and appropriate withholdings. Commissions will be

paid when earned on the 15th and last day of each month.

Benefits. Employee shall be eligible for enrollment in Employer's medical insurance plan, dental insurance plan, 401K plan and/or other retirement plan as each may be in effect from time to time during Employee's employment, the Employer's cost of such to be included in the Branch Operating Expenses.

Termination. Upon termination of employment Employee shall be paid a Commission for all loans actively originated, negotiated, secured, administered and processed by the branch at which Employee is the manager that are approved prior to Employee's termination date if and only if actually closed and funded prior to the date of termination; provided, that Employee may be entitled to additional compensation in accordance with company policies and procedures. The Commission shall only be paid after all Branch Operating Expenses have been deducted.

Termination Due to Employee's Malfeasance. Where Employee is terminated due to the Employee's acts of fraud, theft, forgery or other wrongful or illegal acts, Employee forfeits any right to additional compensation which may be otherwise paid in accordance with this Agreement or company policies and procedures.

Confidentiality. Employee during the term of employment under this Agreement will have access to and become familiar with various company terms, forms, procedures, and records, which are owned by Employer, and which are regularly used in the operation of the business of Employer. Employee shall

not disclose any of the aforesaid company forms, procedures, or records, nor use them in any way during the term of this Agreement, except as required in the course of Employee's employment, and at no time thereafter. All files, records, documents, drawings, specifications, proprietary information, and similar items relating to the business of Employer, whether prepared by Employee or otherwise coming into Employee's possession (including, without limitation, customer lists and loans/applications in process), shall remain the exclusive property of Employer and shall not be copied or removed from the premises of Employer under any circumstances whatsoever without the prior written consent of Employer.

Employee Works. All copyrights, patents, trade secrets or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes or works of authorship developed or created by Employee during the course of performing work for Employer (collectively, the "Work Product") shall belong exclusively to Employer and shall, to the extent possible, be considered a work made by Employee for hire for Employer within the meaning of Title 17 of the United States Code. To the extent any Work Product may not be considered a work made by Employee for hire for Employer, Employee agrees to assign, and automatically assigns at the time of creation of the Work Product, without any requirement of further consideration, any right, title or interest Employee may have in such Work Product to Employer. Upon request of Employer, Employee shall take such further actions, including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

Non-Compete. During the term of this Agreement, Employee shall not, directly or indirectly in any manner, either as employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business within the mortgage banking or real estate industries (including without limitation any business competing in any manner whatsoever with the business of Employer.

Non-Solicitation. During the term of Employee's employment and for a period of one (1) year thereafter, Employee shall not (a) either directly or indirectly, interfere in any manner whatsoever with the business of Employer; (b) either directly or indirectly solicit, attempt to hire or hire any other personnel or employees of Employer or any of its subsidiaries or affiliates without written approval of Employer; or (c) either directly or indirectly facilitate or assist, in any manner whatsoever, any other person, entity or company with the solicitation, attempt to hire, or hiring of any personnel or employee of Employer or any of its subsidiaries or affiliates without written approval of Employer.

Equal Housing. It is Employer's policy to fully support equal opportunities in housing, and lending and the laws and principles pertaining thereto, and Employee agrees to and shall conduct his or her endeavors in full compliance therewith in furtherance of Employer's policy to strictly abide by such fair housing and lending laws, thereby providing services to borrowers, buyers and sellers regardless of race, creed, color, national origin, sex, age, handicap or familial status.

ARBITRATION AND DISPUTE RESOLUTION

Disputes Subject to Arbitration. With the exception of claims by Employer or Employee for injunctive relief, Employee agrees that any dispute, controversy, claim, or difference between Employer and Employee which directly or indirectly relates to or arises out of this Agreement, or its breach, shall be subject to arbitration in the City of Houston, Texas in accordance with the then governing rules of the American Arbitration Association. It is the intention of the parties that this Agreement shall be enforceable under the Federal Arbitration Act and at common law. Each party shall bear its own costs, expenses and fees, including without limitation, attorneys' fees and experts' fees with respect to any such arbitration. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction.

The types of disputes or controversies intended by the parties to be subject to arbitration shall include, but not be limited to, (i) any claim which directly or indirectly relates to or arises out of this Agreement, (ii) any and all torts including defamation, libel, slander, false light, intentional infliction of emotional distress, tortuous interference, negligence, assault, battery, invasion of privacy, and any other violation of a legal duty not based in contract which gives rise to damages of whatever nature, (iii) any and all causes of action arising out of or relating to 18 U.S.C. §1702; 18 U.S.C. §§ 2510-2513, 2515-2521, 2701-2710, 3117, 3121-3126; 29 U.S.C. § 621 *et seq.*; 42 U.S.C. §1981; 42 U.S.C. §1983, and (iv) any and all causes of action that involve or relate to Title VII or applicable state or local laws, for discrimination because of race, color, sex, sexual orientation or preference, religion, national

origin, age, marital status, handicap or disability, veteran or citizenship status, or sexual harassment.

Severability of Disputes. Employee agrees that in the event a dispute, controversy, claim, or difference which is subject to arbitration is alleged or plead in connection with any dispute, controversy, claim, or difference described in this Agreement between Employer and Employee, the non-arbitrable dispute or claim shall be severable by either party and litigated in a judicial proceeding separate and apart from the dispute, controversy, claim, or difference subject to arbitration. If Employee contends that the dispute, controversy, claim, or difference alleged or plead is so intertwined with the dispute, controversy, claim, or difference subject to arbitration, Employee agrees to waive the arbitration requirements contained in this Agreement at Employer's request.

Attorney Fees. If Employee brings a claim in court that should have been brought in arbitration pursuant to this Agreement, Employee agrees to pay Employer's attorney fees, costs and expenses associated with transferring the matter to arbitration, including any filing fees charged by the arbitration tribunal.

Notices. All notices and other communications required or permitted under this Agreement shall be validly given, made, or served if in writing and delivered personally or sent by registered mail, to the Employee at the following address.

LARRY CORRAles

600 Lemon Dr.

Arlington, TX 76018

addressed to the Employer at:

Allied Home Mortgage Capital Corporation
Attn: Jim C. Hodge, President
6110 Pinemont, Ste. 215
Houston, Texas 77092

Copy Attention: Sandy Croghan, Sr. Vice President
6110 Pinemont Drive
Houston, Texas 77092

or at any other address as any party may, from time to time, designate by notice given in compliance with this section.

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of law principles or the choice of law principles of the state or states where such Employee is employed. Subject to the arbitration provisions in this Agreement, each party consents to the personal jurisdiction of any state or federal court in the City of Houston, Harris County, Texas.

Titles and Captions. All section titles or captions contained in this Agreement are for convenience only

and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Waiver. Any waiver of any provision of this Agreement shall not be effective unless in writing and signed by the waiving party. A waiver of one portion of this Agreement shall not effect a waiver of any other provision of this Agreement.

ALLIED HOME MORTGAGE CAPITAL CORPORATION, a Texas corporation, Employer

By:

/s/_____
Name:
Title:

I HAVE READ, FULLY UNDERSTAND, HAVE HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL AND HAVE DONE SO OR HAVE WILLINGLY WAIVED SUCH OPPORTUNITY, AND ACCEPT THIS AGREEMENT AND ALL EXHIBITS, IF ANY, ATTACHED HERETO AND HAVE RECEIVED A COPY OF THIS AGREEMENT.

/s/_____
LARRY CORRAles
[Employee's Printed Name]

APPENDIX G

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
236TH JUDICIAL DISTRICT

CAUSE NO. 236-231317-08

[Filed November 21, 2008]

LARRY CORRALES	)
	)
VS.	)
	)
ALLIED HOME MORTGAGE CAPITAL CORP., and THE YELLOW SIGN COMPANY	)

DEFENDANTS' AMENDED MOTION TO TRANSFER VENUE, FIRST AMENDED ANSWER SUBJECT THERETO, AND MOTION TO COMPEL ARBITRATION

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Allied Home Mortgage Capital Corporation and The Yellow Sign Company ("Defendants") hereby file their Amended Motion to Transfer Venue, First Amended Answer subject to the motion to transfer venue, and Motion to Compel Arbitration, in response to the original petition filed by

Plaintiff, Larry Corrales, and in support thereof would show the following:

I. Amended Motion to Transfer Venue

Defendants specifically deny Plaintiff's venue fact that "[v]enue is proper in Tarrant County as the county in which all or part of the events giving rise to the cause of action occurred." *Plaintiff's Original Petition*, p. 1. Defendants specifically deny Plaintiff's venue fact that Plaintiff "was employed by Yellow Sign Company to work out of his home in Arlington, Tarrant County, Texas." *Id.* at pp. 1-2. Defendants attach an affidavit to this motion as *Exhibit 1* to establish Defendants' venue facts and incorporates the affidavit by reference.

Defendants more specifically deny that Larry Corrales was employed in any capacity by The Yellow Sign Company. The Yellow Sign Company has no employees. *Exhibit 1*. Mr. Corrales was employed by Allied from December 13, 2001 to March 5, 2007 as a branch manager of one of Allied's many branch offices.

Defendants specifically plead that this case should be transferred to Harris County, Texas because Plaintiff signed an employment agreement with Allied in 2002 that clearly states that any dispute shall be heard in Houston, Harris County, Texas and is subject to arbitration. *Exhibits 1 & 2*; *see infra Motion to Compel Arbitration*. At all times relevant to this cause of action, Plaintiff was paid by Allied Home Mortgage Capital Corporation. *Exhibit 1*; *Exhibit 3* (Allied check register detailing Allied payments to Plaintiff). Plaintiff never received any compensation from The Yellow Sign Company. *Exhibit 1*. His form W-2 wage

and tax statements for every year between 2002 and 2007 show his employer to be Allied Home Mortgage Capital Corporation. *Id.*; *Exhibit 5* (Plaintiff's W-2 statements indicating that Allied was his employer).

In 2004, Plaintiff was given additional compensation for being in charge of an Allied Home Mortgage Capital Company computer site and program called For Sale By Owner. *Exhibit 1*; *Exhibit 4, Bates-label Allied/Corrales 35* (Allied personnel action form detailing Plaintiff's new role as vice-president of For Sale By Owner and increased salary). He was nevertheless still subject to the terms and conditions of his employment agreement, which he violated, resulting in his termination.

Further, Defendants' principal place of business and main offices are located at 6110 Pinemont, Houston, Harris County, Texas. Mr. Corrales was hired and terminated through the Houston Office of Allied located in Harris County, Texas. *Exhibit 1.*

Pursuant to §§15.002(1), (3) and 15.035 of the Texas Civil Practice and Remedies Code and the parties' arbitration agreement mandating arbitration in Houston, Texas, this matter must be transferred to Harris County, Texas, a county of proper venue.

II. First Amended Answer subject to Motion to Transfer Venue

Defendants generally deny each and every factual allegation contained within Plaintiff's Original Petition and hereby demand strict proof thereof.

Defendant The Yellow Sign Company further pleads that Plaintiff has no right of recovery against it as it did not employ Plaintiff, nor did it take any action to terminate the employment of Plaintiff with Allied Home Mortgage Capital Corporation.

Plaintiff's claims are barred by the applicable statute(s) of limitations.

Although Defendants deny that Plaintiff has any right of recovery, should a judgment be signed against Defendants that includes punitive damages, such damages are limited to no more than $300,000 as to Allied Home Mortgage Capital Corporation and $50,000 as to The Yellow Sign Company.

III. Motion to Compel Arbitration subject to Motion to Transfer Venue

Defendants move the Court, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, for entry of an Order staying this action and compelling arbitration of Plaintiff's claims asserted against Defendants, as they are subject to the arbitration agreement between Allied and Plaintiff. The agreement to arbitrate is enforceable by this Court pursuant to the FAA, which specifically authorizes the Court, upon motion, to enter an order directing that arbitration proceed in the manner provided for in the arbitration agreement. 9 U.S.C. § 4 (conferring a right to obtain an order directing that "arbitration proceed in the manner provided for in [the parties'] agreement"); *see also Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 474-75 (1989).

Defendants, as the parties seeking arbitration, carry the initial burden of establishing the existence of an arbitration agreement between the parties and that the controversy at issue falls within the scope of the agreement. *In re Kepka*, 178 S.W.3d 279 (Tex. App.—Houston [1st Dist.] 2005). If Defendants carry their burden, the burden then shifts to Plaintiff, the party opposing arbitration, to present evidence that there was no agreement to arbitrate and/or that the dispute is not arbitrable. *Id.* However, "any doubts regarding the scope of an arbitration agreement are resolved in favor of arbitration." *Koch v. Koch*, 27 S.W.3d 93, 96 (Tex. App.—San Antonio 2000, no pet.); *see also Commerce Park at DFW Freeport v. Mardian Constr. Co.*, 729 F.2d 334, 338 (5th Cir. 1984).

A. Existence of arbitration agreement

On December 5, 2002, Plaintiff entered into an employment agreement with Allied. Attached to this motion as Exhibit 2 is a copy of the agreement, which is incorporated by reference herein. The agreement between Plaintiff and Allied contained a requirement that all disputes be submitted to arbitration. Specifically, the arbitration clause provides as follows:

> **ARBITRATION AND DISPUTE RESOLUTION**
>
> **Disputes Subject to Arbitration.** With the exception of claims by Employer or Employee for injunctive relief, Employee agrees that any dispute, controversy, claim, or difference between Employer and Employee which directly or indirectly relates to or arises out of this Agreement, or its breach, shall be subject to arbitration in the City of Houston, Texas in

accordance with the then governing rules of the American Arbitration Association. It is the intention of the parties that this Agreement shall be enforceable under the Federal Arbitration Act and at common law. Each party shall bear its own costs, expenses and fees, including without limitation, attorneys' fees and experts' fees with respect to any such arbitration. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction.

The types of disputes or controversies intended by the parties to be subject to arbitration shall include, but not be limited to, (i) any claim which directly or indirectly relates to or arises out of this Agreement, (ii) any and all torts including defamation, libel, slander, false light, intention infliction of emotional distress, tortuous interference, negligence, assault, battery, invasion of privacy, and any other violation of a legal duty not based in contract which gives rise to damages of whatever nature, (iii) any and all causes of action arising out of or relating to 18 U.S.C. § 1702; 18 U.S.C. §§2510-2513, 2515-2521, 27001-2710, 3117, 3121-3126,; 29 U.S.C. § 621 *et seq.*; 42 U.S.C. § 1981; 42 U.S.C. § 1983, and (iv) any and all causes of action that involve or relate to Title VII or applicable state or local laws, for discrimination because of race, color, sex, sexual orientation or preference, religion, national origin, age, marital status, handicap or disability, veteran or citizenship status, or sexual harassment.

See Exhibit 2, Bates-labeled Allied / Corrales 4. The agreement provides for arbitration under the Federal Arbitration Act ("FAA").

Under the FAA, the Court must compel parties to proceed to arbitration when they have a written agreement to arbitrate. *Bhatia v. Johnston*, 818 F.2d 418 (5th Cir. 1987) (stating that district courts have no discretion to order arbitration on issues as to which an arbitration agreement applies).

Plaintiff refuses to agree to resolve this dispute by arbitration as required by the agreement, arguing that "there is no applicable arbitration agreement that precludes this litigation [because]...[w]hen Corrales was fired, he was fired from his position as Vice President of Yellow Sign Company, NOT as Branch Manager for Allied." *Plaintiff's Original Petition*, p. 5. Plaintiff's argument fails. Plaintiff's contention that he was not fired from his position as branch manager for Allied is false. Indeed, Plaintiff was fired from his position as branch manager. *Exhibit 2*; *Exhibit 4*, *Bates-label Allied / Corrales 32* (Allied personnel action form regarding Plaintiff's termination). Plaintiff's assertion that subsequent to the employment agreement at issue, he was hired by Yellow Sign as Vice President is similarly untrue. *Exhibit 1*. Plaintiff assumed the additional *role* of Vice-President in addition to his responsibilities as a branch manager. *Id.*; *see also Exhibit 4, Bates-label Allied / Corrales 35* (Allied personnel action form concerning Plaintiff's new role as vice-president of For Sale By Owner). As previously explained, all of Plaintiff's paychecks were issued by Allied, not Yellow Sign. *Exhibit 1*; *Exhibit 3* (Allied check register detailing payments made to Plaintiff). Plaintiff's supervisor was an Allied

employee. *Exhibit 1*. Indeed, Yellow Sign does not have any employees. *Id.* Stated simply, Plaintiff and Allied's employment agreement remained in force and applied to Plaintiff's role of Vice-President as well as to his role as branch manager. As Plaintiff admits, the only employment agreement Plaintiff had was the employment agreement with Allied. *Plaintiff's Original Petition*, p. 5. Plaintiff cannot avoid arbitration by artful pleading.

Moreover, Plaintiff is suing Allied under "the theory of 'integrated enterprise' in that there was common management, ownership, control and human resources functions between [Yellow Sign and Allied.]" *Plaintiff's Original Petition*, p. 4. Defendants assume that Plaintiff has asserted the theory of integrated enterprise, also known as the single employer theory, in an effort to sue both Allied and Yellow Sign since Yellow Sign is not an "employer" under the Texas Commission on Human Rights Act. To sue Yellow Sign under the TCHRA, Plaintiff must show that Yellow Sign is an "employer," meaning that Yellow Sign has at least 15 employees. TEX. LABOR CODE ANN. § 21.002(8)(A). Because Yellow Sign has no employees, Yellow Sign cannot be considered an "employer" under the TCHRA. By asserting the single employer theory, however, Plaintiff can attempt to show that Allied and Yellow Sign, two entities, acted as a single employer and are to be viewed as a single employer for liability and jurisdictional purposes. *See Fields v. Teamsters Local Union No. 988*, 23 S.W.3d 517, 524 (Tex. App.—Houston [1st Dist.] 2000) (internal citations omitted); *see also Trevino v. Celanese Corp.*, 701 F.2d 397, 403-04 (5th Cir. 1983) (explaining that if superficially distinct entities are interrelated to signify

a single, integrated enterprise, they may be considered a "single employer").

Plaintiff cannot on the one hand avoid arbitration by stating that the employment agreement he entered into with Allied is inapplicable to this dispute while on the other hand assert that Allied and Yellow Sign acted as a single employer. Plaintiff cannot request that the Court treat Allied and Yellow Sign as a single employer for liability and jurisdictional purposes and also make the contradictory assertion that his employment agreement with Allied is inapplicable to this dispute.

Additionally, Plaintiff cannot avoid arbitration by arguing that Yellow Sign is not a signatory to the employment contract. The Texas Supreme Court has ruled that nonparties, or non-signatories, to a contract containing an arbitration clause "may be bound to an arbitration clause...." *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 129 & 131 (Tex. 2005). Importantly, Defendant Yellow Sign, the non-signatory to the agreement containing the arbitration clause, is ready and willing to proceed to arbitration.

Finally, the U.S. Supreme Court has stated that "[u]under the Arbitration Act, an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 (1983). In other words, the presence of Yellow Sign, who is not a signatory to the employment agreement, does not defeat the right of Allied to have the claims against it arbitrated. *Tenneco Resins, Inc. v. Davy Int'l*, 770 F.2d 416, 422

(5th Cir. 1985). Plaintiff has not, and cannot, dispute the existence of the arbitration agreement between he and Allied. Therefore, the Court must submit this dispute to arbitration despite the presence of another defendant, even if the Court finds that is not subject to the arbitration clause. The U.S. Supreme Court has emphasized that piecemeal resolution of claims is ***required*** in order to give effect to an arbitration agreement. *Moses H. Cone Memorial Hosp.*, 460 U.S. at 20. Here, however, piecemeal resolution of claims will be unnecessary because Yellow Sign is willing to proceed to arbitration.

B. Scope of Arbitration Clause

Absent some ambiguity in the parties' contract, the language of the arbitration agreement defines the scope of arbitrable disputes under the FAA. *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279 (2002). The language of an arbitration clause is characterized as either narrow or broad. An arbitration clause is narrow when the clause's language requires arbitration of only disputes "arising out of" the agreement. *Pennzoil Exploration and Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061, 1067 (5th Cir. 1998). An arbitration clause is broad when the clause's language requires arbitration of "any dispute that arises out of or relates to" the agreement or disputes that are "in connection with" the agreement. *Id.* The arbitration clause at issue here is a broad clause, stating that "any dispute, controversy, claim, or difference between Employer and Employee which directly or indirectly ***relates to or arises out of*** this Agreement...shall be subject to arbitration in the City of Houston, Texas...." *Exhibit 2, Bates-labeled Allied / Corrales 4* (emphasis added). Broad arbitration

clauses such as the one at issue in this case include not only those claims that literally arise under the contract, but also all disputes between parties "having a significant relationship to the contract regardless of the label attached to the dispute." *Pennzoil Exploration and Prod. Co.*, 139 F.3d at 1067.

Because the parties' agreement contains a broad arbitration clause, arbitration should not be denied unless the particular controversy is absolutely not covered. *Emerald Tex., Inc. v. Peel*, 920 S.W.2d 398, 403 (Tex. App.—Houston [1st Dist.] 1996, no writ). A wide area of controversies are arbitrable when, as here, the agreement contains a broad arbitration clause. Importantly, a presumption of arbitrability exists so that when an arbitration provision's scope is reasonably in doubt, the provision should be construed in favor of arbitration. *Mar-Len of Louisiana, Inc. v. Parsons-Gilbane*, 773 F.2d 633, 635 (5th Cir. 1985) (citing *United Steelworkers of Am. v. Warrior & Gulf Navigational Co.*, 363 U.S. 574, 583 (1960)). Indeed, the presumption of arbitration is strongest when the parties have included a broad arbitration clause in their agreement. The Court must keep in mind the strong, liberal policy favoring arbitration when determining the scope of an arbitration agreement under the FAA. *Webb v. Investacorp, Inc.*, 89 F.3d 252, 258 (5th Cir. 1996). The Fifth Circuit Court of Appeals has stated that any ambiguities in a broad arbitration clause are to be resolved in favor of arbitration. *Id.*

The dispute currently before the Court – Plaintiff's allegation of disability discrimination – is covered by the broad arbitration clause. In addition to stating that "any dispute, controversy, claim, or difference between Employer and Employee which directly or indirectly

relates to or arises out of this agreement...shall be subject to arbitration...," the agreement specifically states that "[t]he types of disputes or controversies intended by the parties to be subject to arbitration ***shall*** include...any and all causes of action that involve or relate to...disability." *Exhibit 2, Bates-labeled Allied / Corrales 4* (emphasis added). Therefore, because the disability discrimination dispute before the Court is explicitly covered by the arbitration clause, the Court should compel Plaintiff to arbitrate his claims.

IV. Prayer for Relief

THEREFORE, Defendants respectfully request that the Court set their Motion to Transfer Venue for hearing and, after the hearing, grant Defendants' motion and transfer this case to Harris County, Texas. Defendants further request that the Court grant their Motion to Compel Arbitration. Finally, Defendants request that Plaintiff take nothing by reason of his suit, that Defendants recover their costs of court, and for any other relief that Defendants may show themselves to be justly entitled.

Respectfully submitted,

McGinnis, Lochridge & Kilgore, L.L.P.

By: /s/_____

Murphy S. Klasing, # 00791034
Sarah W. Langlois, # 24056503
1221 McKinney, Suite 3200
Houston, Texas 77010
(713) 615-8536

(713) 615-8585 Fax
email: mklasing@mcginnislaw.com;
slanglois@mcginnislaw.com

ATTORNEYS FOR DEFENDANTS ALLIED HOME MORTGAGE CAPITAL CORP. AND THE YELLOW SIGN COMPANY

[certificate of service omitted]

EXHIBIT 1

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
236TH JUDICIAL DISTRICT

CAUSE NO. 236-231317-08

LARRY CORRALES	)
	)
VS.	)
	)
ALLIED HOME MORTGAGE CAPITAL	)
CORP., and THE YELLOW	)
SIGN COMPANY	)
	)

AFFIDAVIT OF PATRICIA CASSELL

COUNTY OF HARRIS	§
	§
STATE OF TEXAS	§

Before me, the undersigned notary, on this day personally appeared Patricia Cassell, a person whose identity is known to me. After I administered an oath to the affiant, upon the oath the affiant testified:

1. "My name is Patricia Cassell. I am over 18 years of age, of sound mind, and capable of making this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are true and correct.

2. I am an employee of Allied Home Mortgage Capital Corp. ("Allied"). I am the Vice President of

Human Resources with Allied and am a custodian of records for Allied.

3. Attached to this affidavit are 41 pages of records from Allied's file relating to Larry Corrales, labeled Exhibit 2, Bates-labeled *Allied / Corrales 1-6*; Exhibit 3, Bates-labeled *Allied / Corrales, 7-31*; Exhibit 4, Bates-labeled *Allied / Corrales 32-35*; and Exhibit 5, Bates-labeled *Allied / Corrales 36-41*. These records are kept by me in the regular course of business, and it was the regular course of business for an employee or representative of Allied with knowledge of the act, event, condition, or opinion that was recorded, to make this record or to transmit the information to be included in this record. The record was made at or near the time or reasonably soon after the act, event, condition, or opinion that was recorded. The records attached to this affidavit as Exhibits 2-5, Bates-labeled *Allied / Corrales 1-41*, are exact duplicates of the original.

4. Larry Corrales ("Mr. Corrales") was employed by Allied Home Mortgage Capital Corp. ("Allied") from December 13, 2001 to March 5, 2007 as a branch manager of one of Allied's many branch offices. Mr. Corrales entered into an employment agreement with Allied in 2002 that states that any dispute shall be heard in Houston, Harris County, Texas and is subject to arbitration.

5. Allied's and The Yellow Sign Company's ("Yellow Sign") principal places of business and main offices are located at 6110 Pinemont, Houston, Harris County, Texas. Mr. Corrales was hired and terminated through the Houston Office of Allied located in Harris County, Texas.

6. At all times relevant to Mr. Corrales employment, he was paid by Allied. All of Mr. Corrales' paychecks were issued by Allied, not Yellow Sign. Mr. Corrales never received any compensation from The Yellow Sign Company. Mr. Corrales' form W-2 wage and tax statements for every year between 2002 and 2007 show his employer to be Allied Home Mortgage Capital Corporation.

7. In 2004, Mr. Corrales was given additional compensation for being in charge of an Allied computer site and program called For Sale By Owner and assumed the additional role of Vice-President of Yellow Sign. Mr. Corrales was still subject to the terms and conditions of his employment agreement with Allied after he took on the role of Vice-President of Yellow Sign.

8. Yellow Sign has no employees. Before and after Mr. Corrales assumed the additional role of Vice-President of Yellow Sign, his supervisor was an Allied employee.

9. Plaintiff was fired from his position as an Allied branch manager and his role of Vice-President of Yellow Sign.

Further, affiant sayeth not."

I have carefully read this statement and acknowledge that the facts are true and correct.

By: /s/ _____
Patricia Cassell

[Seal]	CYNTHIA A. COOGLER Notary Public, State of Texas My Commission Expires June 27, 2009

Dated: The 18th day of November, 2008.
Subscribed and sworn to before
me this 18th day of November, 2008.

/s/ Cynthia A. Coogler
Notary Public

My Commission expires: 6-27-09

EXHIBIT 2

[*Allied / Corrales 000001*]

THIS EMPLOYMENT AGREEMENT IS SUBJECT TO ARBITRATION. BY SIGNING THIS EMPLOYMENT AGREEMENT, YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL FOR CERTAIN CLAIMS. PLEASE READ CAREFULLY.

EMPLOYMENT AGREEMENT
(Branch Manager)

THIS EMPLOYMENT AGREEMENT ("Agreement") signed this 5 day of December, 2002 ("Effective Date"), by and between ALLIED HOME MORTGAGE CAPITAL CORPORATION, a Texas Corporation ("Employer"), and LARRY CORRALES ("Employee"). Unless otherwise and provided herein, Employer, as defined above, shall mean both ALLIED HOME MORTGAGE CAPITAL CORPORATION and any such successor(s) or assign(s) that assumes and agrees to perform this Agreement, by operation of law or otherwise.

Employment. On the terms and subject to the conditions of this Agreement, Employer hereby employs and engages the services of Employee to serve as, and Employee agrees to diligently and competently serve as, and perform the functions of Branch Manager.

Term. Employee and Employer agree that this employment shall be "at will" and that this Agreement does not contain or constitute a guarantee of employment for any specific period. At any time and

for any reason, Employer may terminate Employee's employment with or without cause or notice other than as required by law. Employee may resign or terminate his/her employment, but acknowledges that, if he/she resigns, the Employer will need a certain period of time to locate a replacement. Accordingly, Employee will give at least two week's notice prior to resignation; however, Employer, at its absolute discretion, may instruct Employee to leave earlier, and if so instructed, Employee shall do so and his/her employment shall end as of such earlier date designated by Employer.

Scope of Employment. Employee shall have the duties and responsibilities associated with the position of Branch Manager. Employee shall be responsible for operating a branch office, including but not limited to, originating, negotiating, securing, processing and administering the closing of loans as directed by Employer and shall perform any other duties set forth herein or requested by Employer. As a Branch Manager, Employee shall be responsible for managing the day-to-day operations of the branch office where Employee is employed. Employee shall be responsible for ensuring that such branch office complies with all applicable federal, state and local statutes and regulations, and Employer's policies, procedures and programs.

Employee is not authorized, absent prior written approval by Employer, to engage in or perform any act or action contrary to company policies or procedures, including without limitation: (i) to make or issue any loan commitment (other than lock loans with investor and lock loans with borrowers in accordance with company policies and procedures); (ii) to enter into or make (a) employment agreements; (b) lease

agreements, (c) banking or financial arrangements or agreements, such as business loans or lines of credit, (d) purchases in excess of $1,000.00 in the aggregate during any calendar month, (e) agreements for the purchase or lease of office equipment; (iii) to issue forward loan commitments; (Employer will issue, subject to its sole discretion, all forward loan [*Allied / Corrales 000002*] commitments in accordance with company policies and procedures) (iv) to place any advertising, in any medium; (Employee agrees and acknowledges that he or she is prohibited from placing or running any advertising in the name or for the benefit of Employer or a branch office without prior written approval); (v) to use the name "Allied" except in connection with Employer's business and, under all circumstances, is not authorized to use the name after termination or (vi) to hire or fire any personnel employed in the branch office.

Employee further agrees and acknowledges that he or she will not open, attempt to open, operate or attempt to operate, any bank account in Employer's name, or any similar name, and that all monies received by Employee for Employer or on Employer's behalf are funds of Employer and will be made payable to Employer; and all such monies are held in trust and shall be delivered immediately to Employer, all in accordance with company policies and procedures.

Compensation. As and for compensation as a Branch Manager, Employer shall pay Employee a Commission equal to the Net Profit of the branch managed by Employee, subject to all applicable laws, rules and regulations, including without limitation, RESPA, HUD regulations and mortgagee letters, and state law restrictions. Net Profit, as contemplated herein, shall

be calculated as follows: Gross Revenues from loan originations, minus all Branch Operating Expenses. Gross Revenues shall mean all monies earned through originating, negotiating, securing, processing and administering the closing of mortgage loans directly attributable to the operations of the branch office during the applicable period, computed as follows: an amount, equal to one of the following (at the choice of Employer depending on the type of loan), (i) the "Wholesale Pricing Premium," (ii) the forward loan commitment fee collected, or (iii) the fee for locking a loan rate, if any, up to the FNMA/FHLMC conforming loan limit on each loan closed; in each case less any investor charges or fees, and less thirty (30) basis points of the loan amount. The "Wholesale Pricing Premium" is the rate above par value of the loan as quoted by Employer in its daily pricing sheets, or as determined by any other company with which Employer is approved to sell loans and through which such loan is closed. Branch Operating Expenses shall mean all expenses and fees actually incurred by the branch office from operations during the preceding calendar month. Branch Operating Expenses are contemplated to include, but may not be limited to, branch salaries and payroll expenses, the branch office lease payment, telephone charges, long distance, facsimile costs, equipment purchases and fees, supplies, advertising, insurance, association or license fees, government license fees, audit fees, accrued expenses and amounts specified in the Employer's policies and procedures; which items, in each case, are permitted under applicable HUD regulations and mortgagee letters.

Employee shall be paid the Commission less all applicable taxes, including FICA and Social Security,

and appropriate withholdings. Commissions will be paid when earned on the 15th and last day of each month.

Benefits. Employee shall be eligible for enrollment in Employer's medical insurance plan, dental insurance plan, 401K plan and/or other retirement plan as each may be in effect from time to time during Employee's employment, the Employer's cost of such to be included in the Branch Operating Expenses.

[*Allied / Corrales 000003*]

Termination. Upon termination of employment Employee shall be paid a Commission for all loans actively originated, negotiated, secured, administered and processed by the branch at which Employee is the manager that are approved prior to Employee's termination date if and only if actually closed and funded prior to the date of termination; provided, that Employee may be entitled to additional compensation in accordance with company policies and procedures. The Commission shall only be paid after all Branch Operating Expenses have been deducted.

Termination Due to Employee's Malfeasance. Where Employee is terminated due to the Employee's acts of fraud, theft, forgery or other wrongful or illegal acts, Employee forfeits any right to additional compensation which may be otherwise paid in accordance with this Agreement or company policies and procedures.

Confidentiality. Employee during the term of employment under this Agreement will have access to and become familiar with various company terms,

forms, procedures, and records, which are owned by Employer, and which are regularly used in the operation of the business of Employer. Employee shall not disclose any of the aforesaid company forms, procedures, or records, nor use them in any way during the term of this Agreement, except as required in the course of Employee's employment, and at no time thereafter. All files, records, documents, drawings, specifications, proprietary information, and similar items relating to the business of Employer, whether prepared by Employee or otherwise coming into Employee's possession (including, without limitation, customer lists and loans/applications in process), shall remain the exclusive property of Employer and shall not be copied or removed from the premises of Employer under any circumstances whatsoever without the prior written consent of Employer.

Employee Works. All copyrights, patents, trade secrets or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes or works of authorship developed or created by Employee during the course of performing work for Employer (collectively, the "Work Product") shall belong exclusively to Employer and shall, to the extent possible, be considered a work made by Employee for hire for Employer within the meaning of Title 17 of the United States Code. To the extent any Work Product may not be considered a work made by Employee for hire for Employer, Employee agrees to assign, and automatically assigns at the time of creation of the Work Product, without any requirement of further consideration, any right, title or interest Employee may have in such Work Product to Employer. Upon request of Employer, Employee shall take such further

actions, including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

Non-Compete. During the term of this Agreement, Employee shall not, directly or indirectly in any manner, either as employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business within the mortgage banking or real estate industries (including without limitation any business competing in any manner whatsoever with the business of Employer.

Non-Solicitation. During the term of Employee's employment and for a period of one (1) year thereafter, Employee shall not (a) either directly or indirectly, interfere in any manner whatsoever with the business of Employer; (b) either directly or indirectly solicit, attempt to hire or hire any other personnel or employees of Employer or any of its subsidiaries or affiliates without written approval of Employer; or (c) either directly or [*Allied / Corrales 000004*] indirectly facilitate or assist, in any manner whatsoever, any other person, entity or company with the solicitation, attempt to hire, or hiring of any personnel or employee of Employer or any of its subsidiaries or affiliates without written approval of Employer.

Equal Housing. It is Employer's policy to fully support equal opportunities in housing, and lending and the laws and principles pertaining thereto, and Employee agrees to and shall conduct his or her endeavors in full compliance therewith in furtherance

of Employer's policy to strictly abide by such fair housing and lending laws, thereby providing services to borrowers, buyers and sellers regardless of race, creed, color, national origin, sex, age, handicap or familial status.

ARBITRATION AND DISPUTE RESOLUTION

Disputes Subject to Arbitration. With the exception of claims by Employer or Employee for injunctive relief, Employee agrees that any dispute, controversy, claim, or difference between Employer and Employee which directly or indirectly relates to or arises out of this Agreement, or its breach, shall be subject to arbitration in the City of Houston, Texas in accordance with the then governing rules of the American Arbitration Association. It is the intention of the parties that this Agreement shall be enforceable under the Federal Arbitration Act and at common law. Each party shall bear its own costs, expenses and fees, including without limitation, attorneys' fees and experts' fees with respect to any such arbitration. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction.

The types of disputes or controversies intended by the parties to be subject to arbitration shall include, but not be limited to, (i) any claim which directly or indirectly relates to or arises out of this Agreement, (ii) any and all torts including defamation, libel, slander, false light, intentional infliction of emotional distress, tortuous interference, negligence, assault, battery, invasion of privacy, and any other violation of a legal duty not based in contract which gives rise to damages of whatever nature, (iii) any and all causes of action arising out of or relating to 18 U.S.C. §1702; 18

U.S.C. §§ 2510-2513, 2515-2521, 2701-2710, 3117, 3121-3126; 29 U.S.C. § 621 *et seq.*; 42 U.S.C. §1981; 42 U.S.C. §1983, and (iv) any and all causes of action that involve or relate to Title VII or applicable state or local laws, for discrimination because of race, color, sex, sexual orientation or preference, religion, national origin, age, marital status, handicap or disability, veteran or citizenship status, or sexual harassment.

Severability of Disputes. Employee agrees that in the event a dispute, controversy, claim, or difference which is subject to arbitration is alleged or plead in connection with any dispute, controversy, claim, or difference described in this Agreement between Employer and Employee, the non-arbitrable dispute or claim shall be severable by either party and litigated in a judicial proceeding separate and apart from the dispute, controversy, claim, or difference subject to arbitration. If Employee contends that the dispute, controversy, claim, or difference alleged or plead is so intertwined with the dispute, controversy, claim, or difference subject to arbitration, Employee agrees to waive the arbitration requirements contained in this Agreement at Employer's request.

Attorney Fees. If Employee brings a claim in court that should have been brought in arbitration pursuant to this Agreement, Employee agrees to pay Employer's [*Allied/Corrales 000005*] attorney fees, costs and expenses associated with transferring the matter to arbitration, including any filing fees charged by the arbitration tribunal.

Notices. All notices and other communications required or permitted under this Agreement shall be validly given, made, or served if in writing and

delivered personally or sent by registered mail, to the Employee at the following address.

LARRY CORRAles

600 Lemon Dr.

Arlington, TX 76018

addressed to the Employer at:

Allied Home Mortgage Capital Corporation
Attn: Jim C. Hodge, President
6110 Pinemont, Ste. 215
Houston, Texas 77092

Copy Attention: Sandy Croghan, Sr. Vice President
6110 Pinemont Drive
Houston, Texas 77092

or at any other address as any party may, from time to time, designate by notice given in compliance with this section.

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of law principles or the choice of law principles of the state or states where such Employee is employed. Subject to the arbitration provisions in this Agreement, each party consents to the personal jurisdiction of any state or federal court in the City of Houston, Harris County, Texas.

Titles and Captions. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

[*Allied / Corrales 000006*]

Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Savings Clause. If any provision of this Agreement, or the application of such provision to any person or

circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Waiver. Any waiver of any provision of this Agreement shall not be effective unless in writing and signed by the waiving party. A waiver of one portion of this Agreement shall not effect a waiver of any other provision of this Agreement.

ALLIED HOME MORTGAGE CAPITAL CORPORATION, a Texas corporation, Employer

By:

/s/ _____
Name:
Title:

I HAVE READ, FULLY UNDERSTAND, HAVE HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL AND HAVE DONE SO OR HAVE WILLINGLY WAIVED SUCH OPPORTUNITY, AND ACCEPT THIS AGREEMENT AND ALL EXHIBITS, IF ANY, ATTACHED HERETO AND HAVE RECEIVED A COPY OF THIS AGREEMENT.

/s/ _____
LARRY CORRALES
[Employee's Printed Name]

EXHIBIT 3

Detail Payroll Register
Allied Jul 21, 2008 10:13 AM

Select: Company is AMCC - Allied Home Mortgage Capital Corporation and Employee(s) is 12909

Sort Order: Company(Asc), Name (Last, First MI)(Asc), Period Control(Asc)

Pay Period Range: 200201011 - 200807319

EMPLOYEE		EARNINGS			
Name	**Number**	**Code**	**Pcs**	**Hours**	**Payrate**
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200208153		Pay Date 8/15/2002
Check Printed: 2055		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200208303		Pay Date 8/30/2002
Check Printed: 2204		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200210151		Pay Date 10/15/2002
Check Printed: 17312			**Check Amount:** 1,483.27		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200210152		Pay Date 10/15/2002
Check Printed: 2645		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200210312		Pay Date 10/31/2002

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Period End Date 8/15/2002		Job Code BRMGR			
3,435.23	Z		NTADV	2,400.00	USFIT	772.44
					USMEDEE	49.81
					USSOCEE	212.98
3,435.23				**2,400.00**		**1,035.23**
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 8/30/2002		Job Code BRMGR			
4,076.77	Z		NTADV	2,800.00	USFIT	964.90
					USMEDEE	59.11
					USSOCEE	252.76
4,076.77				**2,800.00**		**1,276.77**
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 10/8/2002		Job Code BRMGR			
2,000.00	Z				USFIT	363.73
					USMEDEE	29.00
					USSOCEE	124.00
2,000.00						**516.73**
	Direct Deposit: 0.00			**Net:**	1,483.27	
	Period End Date 10/15/2002		Job Code BRMGR			
4,397.55	Z		NTADV	3,000.00	USFIT	1061.14
					USMEDEE	63.76
					USSOCEE	272.65
4,397.55				**3,000.00**		**1,397.55**
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 10/31/2002		Job Code BRMGR			
2,024.32	Z		NTADV	1,500.00	USFIT	369.46
					USMEDEE	29.35
					USSOCEE	125.51

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200305302		Pay Date 5/30/2003
Check Printed: 4747		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200307151		Pay Date 7/15/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200307152		Pay Date 7/15/2003
Check Printed: 5178		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 202307311		Pay Date 7/31/2003
Check Printed: Adjustment			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200308151		Pay Date 8/15/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200308152		Pay Date 8/15/2003

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page				
	Period End Date 5/30/2003	Job Code BRMGR	*Continued from previous page*		
1,255.77			1,000.00		255.77
	Direct Deposit:	0 00	**Net:**	0 00	
	Period End Date 7/8/2003	Job Code BRMGR			
	Direct Deposit: 0.00		**Net:**	0 00	
	Period End Date 7/15/2003	Job Code BRMGR			
1,252 42	Z	NTADV	1,000 00	USFIT	156.61
				USMEDEE	18.16
				USSOCEE	77.65
1,252.42			1,000.00		252.42
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 7/23/2003	Job Code BRMGR			
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 8/8/2003	Job Code BRMGR			
	Direct Deposit: 0.00		**Net:**	0.00	
	Period End Date 8/15/2003	Job Code BRMGR			
1,252 42	Z	NTADV	1,000 00	USFIT	156.61
				USMEDEE	18.16
				USSOCEE	77.65

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200310311		Pay Date 10/31/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200311141		Pay Date 11/14/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200311142		Pay Date 11/14/2003
Check Printed: 6133		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R	12909	Pay No: 1	PerControl 202311261		Pay Date 11/26/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200312151		Pay Date 12/15/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200312152		Pay Date 12/15/2003

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page					
	Period End Date 10/23/2003		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 11/8/2003		Job Code BRMGR			
	Direct Deposit: 0.00			**Net:**	0.00	
	Period End Date 11/14/2003		Job Code BRMGR			
3,503.95	Z		NTADV	2,500.00	USFIT	735.90
					USMEDEE	50.81
					USSOCEE	217 24
3,503.95				**2,500.00**		**1003.95**
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 11/23/2003		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 12/8/2003		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 12/15/2003		Job Code BRMGR			
1,252.42	Z		NTADV	1,000.00	USFIT	156.61
					USMEDEE	18.16
					USSOCEE	77.65

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200312152		Pay Date 12/15/2003
Check Printed: 6355		**Manual**	**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200312311		Pay Date 12/31/2003
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200312312		Pay Date 12/31/2003
Check Printed: 6477		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200401151		Pay Date 1/15/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200401301		Pay Date 1/30/2004
Check Printed: Adjustment			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200401302		Pay Date 1/30/2004

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page				
	Period End Date 12/15/2003	Job Code BRMGR	*Continued from Previous Page*		
1,252.42			1,000.00		252.42
	Direct Deposit:	0 00	**Net:**	0.00	
	Period End Date 12/23/2003	Job Code BRMGR			
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 12/31/2003	Job Code BRMGR			
1,990.22	Z	NTADV	1,500.00	USFIT	337.97
				USMEDEE	28.86
				USSOCEE	123 39
1,990.22			1,500.00		490.22
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 1/8/2004	Job Code BRMGR			
	Direct Deposit:	0 00	**Net:**	0.00	
	Period End Date 1/23/2004	Job Code BRMGR			
	Direct Deposit:	0 00	**Net:**	0.00	
	Period End Date 1/30/2004	Job Code BRMGR			
993.86	Z	NTADV	800 00	USFIT	117.83
				USMEDEE	14.41
				USSOCEE	61 62

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200401302		Pay Date 1/30/2004
Check Printed: 6686		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200402131		Pay Date 2/13/2004
Check Printed: 28136			**Check Amount:** 343.12		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200402133		Pay Date 2/13/2004
Check Printed: 6781		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200402271		Pay Date 2/27/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200402272		Pay Date 2/27/2004
Check Printed: 6885		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R	12909	Pay No: 1	PerControl 200403151		Pay Date 3/15/2004

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page					
	Period End Date 1/30/2004		Job Code BRMGR		*Continued from Previous Page*	
993.86				800.00		193.86
	Direct Deposit:		0 00	**Net:**	0.00	
	Period End Date 2/8/04		Job Code BRMGR			
500 00	Z		AFLAC	96 75	USFIT USMEDEE USSOCEE	29.28 5.85 25.00
500.00				96.75		60.13
	Direct Deposit:		0 00	**Net:**	343.12	
	Period End Date 2/13/2004		Job Code BRMGR			
606.01	Z		NTADV	500 00	USFIT USMEDEE USSOCEE	59 65 8.76 37.57
606.01				500.00		106.01
	Direct Deposit:		0 00	**Net:**	0.00	
	Period End Date 2/23/2004		Job Code BRMGR			
	Direct Deposit:		0 00	**Net:**	0.00	
	Period End Date 2/27/2004		Job Code BRMGR			
606.01	Z		NTADV	500.00	USFIT USMEDEE USSOCEE	59.65 8.79 37.57
606.01				500.00		106.01
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 3/8/2004		Job Code BRMGR			

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200403151		Pay Date 3/15/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200403152		Pay Date 3/15/2004
Check Printed: 6966		Manual	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200403311		Pay Date 3/31/2004
Check Printed: Adjustment			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200404151		Pay Date 4/15/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200404301		Pay Date 4/30/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200404303		Pay Date 4/30/2004

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page				
	Period End Date 3/8/2004	Job Code BRMGR		*Continued from Previous Page*	
	Direct Deposit:	0.00	**Net:**	0 00	
	Period End Date 3/15/2004	Job Code BRMGR			
735.29	Z	AFLAC	600.00	USFIT	79.04
				USMEDEE	10.66
				USSOCEE	45 59
735.29			600.00		135.29
	Direct Deposit:	0.00	**Net:**	0..00	
	Period End Date 3/23/2004	Job Code BRMGR			
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 4/8/2004	Job Code BRMGR			
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 4/23/2004	Job Code BRMGR			
	Direct Deposit:	0.00	**Net:**	0 00	
	Period End Date 4/30/2004	Job Code BRMGR			
4,047.84	Z	NTADV	2,850.00	USFIT	888.18
				USMEDEE	58.69
				USSOCEE	250.97

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200404303		Pay Date 4/30/2004
Check Printed: 7296		Manual	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200405141		Pay Date 5/14/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 BRMGR	PerControl 200405142		Pay Date 5/14/2004
Check Printed: 7404		Manual	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200405281		Pay Date 5/28/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R	12909	Pay No: 1	PerControl 200406151		Pay Date 6/15/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200406301		Pay Date 6/30/2004
Check Printed: Adjustment			**Check Amount:** 0.00		

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page					
	Period End Date 4/30/2004		Job Code BRMGR	*Continued from Previous Page*		
4,047.84				2,850.00		
	Direct Deposit:		0 00	**Net:**	0.00	
	Period End Date 5/8/2004		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 5/14/2004		Job Code BRMGR			
1,252.42	Z		NTADV	1,000.00	USFIT	156.61
					USMEDEE	18.16
					USSOCEE	77.65
1,252.42				1,000.00		252.42
	Direct Deposit:		0.00	**Net:**	0 00	
	Period End Date 5/23/2004		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 6/8/2004		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 6/23/2004		Job Code BRMGR			
	Direct Deposit:		0.00	**Net:**	0 00	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200407151		Pay Date 7/15/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200407301		Pay Date 7/30/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200408131		Pay Date 8/13/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200408311		Pay Date 8/31/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200409151		Pay Date 9/15/2004
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200409153		Pay Date 9/15/2004
		REG		40.00	24.0375

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page					
	Period End Date 7/8/2004		Job Code BRMGR			
	Direct Deposit:		0.00	Net:	0.00	
	Period End Date 7/23/2004		Job Code BRMGR			
	Direct Deposit:		0.00	Net:	0.00	
	Period End Date 8/8/2004		Job Code BRMGR			
	Direct Deposit:		0.00	Net:	0.00	
	Period End Date 8/23/2004		Job Code EXBRMGR			
	Direct Deposit:		0.00	Net:	0.00	
	Period End Date 9/8/2004		Job Code EXBRMGR			
	Direct Deposit:		0.00	Net:	0.00	
	Period End Date 9/8/2004		Job Code EXBRMGR			
961.50	Z		AFLAC	90.30	USFIT	99.43
					USMEDEE	12 63
					USSOCEE	54 01

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200409153		Pay Date 9/15/2004
				40.00	
Check Printed: 32727		Manual	**Check Amount:** 705.13		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200409301		Pay Date 9/30/2004
		REG		86.67	24.0375
				86.67	
Check Printed: 117291			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200410151		Pay Date 10/15/2004
		REG		86.67	24.0375
				86.67	
Check Printed: 119093			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200410291		Pay Date 10/29/2004
		REG		86.67	24.0375
				86.67	
Check Printed: 120824			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200411151		Pay Date 11/15/2004
				86.67	24.0375
		REG		**86.67**	
Check Printed: 122570			**Check Amount:** 0.00		

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page						
	Period End Date 9/8/2004		Job Code EXBRMGR	*Continued from Previous Page*		
961.50				90.30		166.07
	Direct Deposit:		0.00	**Net:**	705.13	
	Period End Date 9/23/2004		Job Code EXBRMGR			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				6.45		518.52
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 10/8/2004		Job Code EXBRMGR			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				6.45		518.52
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 10/23/2004		Job Code EXBRMGR			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				6.45		518.52
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 11/8/2004		Job Code EXBRMGR			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				6.45		518.52
	Direct Deposit:		1,558.36	**Net:**	1,558.36	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200411301		Pay Date 11/30/2004
		REG		86.67	24.0375
				86.67	
Check Printed: 124295			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200412151		Pay Date 12/15/2004
		REG		86.67	24.0375
				86.67	
Check Printed: 126816			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200412301		Pay Date 12/30/2004
		REG		86.67	24.0375
				86.67	
Check Printed: 128601			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200501141		Pay Date 1/14/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 130329			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200501311		Pay Date 1/31/2005
		REG		86.67	24.0375

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page						
	Period End Date 11/23/2004		Job Code EXBRMGR			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				**6.45**		**518.52**
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 12/8/2004		Job Code EXVP			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				**6.45**		**518.52**
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 12/23/2004		Job Code EXVP			
2,083.33	Z		AFLAC	6.45	USFIT	359.64
					USMEDEE	30.11
					USSOCEE	128.77
2,083.33				**6.45**		**518.52**
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 1/8/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						**517.50**
	Direct Deposit:		1,558.36	**Net:**	1,558.36	
	Period End Date 1/23/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129.17

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200501311		Pay Date 1/31/2005
			86.67		
Check Printed: 131942			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200502151		Pay Date 12/15/2005
		REG	86.67	24.0375	
			86.67		
Check Printed: 133635			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200502281		Pay Date 2/28/2005
		REG	86.67	24.0375	
			86.67		
Check Printed: 135177			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200503151		Pay Date 3/15/2005
		REG	86.67	24 0375	
			86.67		
Check Printed: 136834			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No· 1	PerControl 200503311		Pay Date 3/31/2005
		REG	86 67	24 0375	
			86.67		
Check Printed: 138509			**Check Amount:** 0 00		

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page				
	Period End Date 1/23/2005	Job Code EXVP		*Continued from Previous Page*	
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 2/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 2/23/2005	Job Code EXVP			
2,083.33	Z		6.45	USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33			6.45		517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 3/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 3/23/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales,			PerControl		Pay Date
Larry R.	12909	Pay No. 1	200504151		4/15/2005
		REG		86.67	24 0375
			86.67		
Check Printed: 140284			**Check Amount:** 0.00		
Corrales,			PerControl		Pay Date
Larry R	12909	Pay No. 1	200504291		4/29/2005
		REG		86.67	24.0375
			86.67		
Check Printed: 141910			**Check Amount:** 0 00		
Corrales,			PerControl		Pay Date
Larry R.	12909	Pay No: 1	200505131		5/13/2005
		REG		86.67	24 0375
			86.67		
Check Printed: 143605			**Check Amount:** 0.00		
Corrales,			PerControl		Pay Date
Larry R.	12909	Pay No: 1	200505311		5/31/2005
		PERS		24 00	24.0375
		REG		62.67	24.0375
			86.67		
Check Printed: 145246			**Check Amount:** 0.00		
Corrales,			PerControl		Pay Date
Larry R	12909	Pay No: 1	200506151		6/15/2005
		REG		62.67	24.0375
		VAC		24 00	24.0375

			DEDUCTIONS		TAXES	
Current Amt	Shift	Shift Amt	Code	Amount	Code	Amount
Continued from previous page						
	Period End Date 4/8/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						**517.50**
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 4/23/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						**517.50**
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 5/8/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						**517.50**
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 5/23/2005		Job Code EXVP			
576.90	Z				USFIT	358.12
1,506.43	Z				USMEDEE	30.21
					USSOCEE	129.17
2,083.33						**517.50**
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 6/8/2005		Job Code EXVP			
1,506.43	Z				USFIT	358.12
576.90	Z				USMEDEE	30.21
					USSOCEE	129.17

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200506151		Pay Date 6/15/2005
				86.67	
Check Printed: 147028			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200506301		Pay Date 6/30/2005
		REG		57.67	24.0375
		SICK		20.00	24.0375
		VAC		9.00	24.0375
				86.67	
Check Printed: 148734			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200507151		Pay Date 7/15/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 150505			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200507152		Pay Date 7/15/2005
		BRMGR			
Check Printed: 10363		**Manual**	**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200507291		Pay Date 7/29/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 152240			**Check Amount:** 0.00		

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page					
	Period End Date 6/8/2005		Job Code EXVP		*Continued from Previous Page*	
2,083.33						517.50
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 6/23/2005		Job Code EXVP			
1,386.24	Z				USFIT	358.12
480.75	Z				USMEDEE	30.21
216.34	Z				USSOCEE	129.17
2,083.33						517.50
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 7/8/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129 17
2,083.33						517.50
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 7/8/2005		Job Code EXVP			
1,252 15	Z		NTADV	1,000.00	USFIT	156.36
					USMEDEE	18 16
					USSOCEE	77.63
1,252.15				1,000.00		252.15
	Direct Deposit:		0 00	**Net:**	0 00	
	Period End Date 7/23/2005		Job Code EXVP			
2,083.33	Z				USFIT	358.12
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						517.50
	Direct Deposit:		1,565.83	**Net:**	1,565.83	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200508151		Pay Date 8/15/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 154104				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200508311		Pay Date 8/31/2005
		REG		78.67	24.0375
		SICK		8.00	24.0375
				86.67	
Check Printed: 155918				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200509151		Pay Date 9/15/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 157745				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200509301		Pay Date 9/30/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 159352				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200510141		Pay Date 10/14/2005
		REG		86.67	24.0375

		DEDUCTIONS		TAXES	
Current Amt	Shift / Shift Amt	Code	Amount	Code	Amount
Continued from previous page					
	Period End Date 8/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**517.50**
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 8/23/2005	Job Code EXVP			
1,891.03	Z			USFIT	358.12
192.30	Z			USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**517.50**
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 9/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**517.50**
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 9/23/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**517.50**
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 10/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200510141		Pay Date 10/14/2005
				86.67	
Check Printed: 161074				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200510311		Pay Date 10/31/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 162789				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200511151		Pay Date 11/15/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 164496				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200511301		Pay Date 11/30/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 166130				**Check Amount:** 0.00	
Corrales, Larry R.	12909	Pay No: 1	PerControl 200512151		Pay Date 12/15/2005
		REG		86.67	24.0375
				86.67	
Check Printed: 167869				**Check Amount:** 0.00	

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page				
	Period End Date 10/8/2005	Job Code EXVP		*Continued from Previous Page*	
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 10/23/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 11/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 11/23/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	
	Period End Date 12/8/2005	Job Code EXVP			
2,083.33	Z			USFIT	358.12
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					517.50
	Direct Deposit:	1,565.83	**Net:**	1,565.83	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1 BNSRG	PerControl 200512301		Pay Date 12/27/2005
Check Printed: 44587			**Check Amount:** 3,467.40		
Corrales, Larry R.	12909	Pay No 1 REG	PerControl 200512301	86.67	Pay Date 12/30/2005 24.0375
			86.67		
Check Printed: 169466			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 REG	PerControl 200601131	86.67	Pay Date 1/13/2006 24.0375
			86.67		
Check Printed: 171069			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 REG	PerControl 200601311	86.67	Pay Date 1/31/2006 24.0375
			86.67		
Check Printed: 172631			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 REG	PerControl 200602151	86.67	Pay Date 2/15/2006 24.0375

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page					
	Period End Date 12/23/2005		Job Code EXVP			
5,000 00	Z				USFIT	1,150.10
					USMEDEE	72.50
					USSOCEE	310.00
5,000.00						1,532.60
	Direct Deposit:		0.00	**Net:**	3,467.40	
	Period End Date 12/23/2005		Job Code EXVP			
2,083.33	Z				USFIT	358 12
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						517.50
	Direct Deposit:		1,565.83	**Net:**	1,565.83	
	Period End Date 1/8/2006		Job Code EXVP			
2,083 33	Z				USFIT	354.62
					USMEDEE	30.21
					USSOCEE	129.17
2,083.33						514.00
	Direct Deposit:		1,569.33	**Net:**	1,569.33	
	Period End Date 1/23/2006		Job Code EXVP			
2,083.33	Z				USFIT	354.62
					USMEDEE	30 21
					USSOCEE	129.17
2,083.33						514.00
	Direct Deposit:		1,569.33	**Net:**	1,569.33	
	Period End Date 2/8/2006		Job Code EXVP			
2,083 33	Z				USFIT	354 62
					USMEDEE	30.21
					USSOCEE	129.17

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200602151		Pay Date 2/15/2006
				86.67	
Check Printed: 174181			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200602281		Pay Date 2/17/2006
		BNSRG			
Check Printed: 46084		**Manual**	**Check Amount:** 12,336.12		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200602281		Pay Date 2/28/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 175611			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200603151		Pay Date 3/15/2006
		REG		70.67	24.0375
		VAC		16.00	24.0375
				86.67	
Check Printed: 177099			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200603311		Pay Date 3/31/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 178675			**Check Amount:** 0.00		

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
	Continued from previous page				
	Period End Date 2/8/2006	Job Code EXVP		*Continued from Previous Page*	
2,083.33					514.00
	Direct Deposit:	1,569.33	**Net:**	1,569.33	
	Period End Date 2/23/2006	Job Code EXVP			
20,000.00	Z			USFIT	6,133.88
				USMEDEE	290.00
				USSOCEE	1,240.00
20,000.00					7,663.88
	Direct Deposit:	0.00	**Net:**	12,336.12	
	Period End Date 2/23/2006	Job Code EXVP			
2,083.33	Z			USFIT	354.62
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					514.00
	Direct Deposit:	1,569.33	**Net:**	1,569.33	
	Period End Date 3/8/2006	Job Code EXVP			
1,698.73	Z			USFIT	354.62
384.60	Z			USMEDEE	30.21
				USSOCEE	129.17
2,083.33					514.00
	Direct Deposit:	1,569.33	**Net:**	1,569.33	
	Period End Date 3/23/2006	Job Code EXVP			
2,083.33	Z			USFIT	354.62
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					514.00
	Direct Deposit:	1,569.33	**Net:**	1,569.33	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200604131		Pay Date 4/13/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 180129			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200604281		Pay Date 4/28/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 181622			Check Amount. 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200605151		Pay Date 5/15/2006
		REG		62.67	24.0375
		VAC		24.00	24 0375
				86.67	
Check Printed: 183097			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200605311		Pay Date 5/31/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 184557			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No. 1	PerControl 200606151		Pay Date 6/15/2006
		REG		86 67	24 0375

		DEDUCTIONS		TAXES	
Current Amt	Shift / Shift Amt	Code	Amount	Code	Amount
Continued from previous page					
	Period End Date 4/8/2006	Job Code EXVP			
2,083.33	Z			USFIT	354.62
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**514.00**
	Direct Deposit:	1,569.33	**Net:**	1,569.33	
	Period End Date 4/23/2006	Job Code EXVP			
2,083.33	Z			USFIT	354 62
				USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**514.00**
	Direct Deposit:	1,569.33	**Net:**	1,569 33	
	Period End Date 5/8/2006	Job Code EXVP			
1,506.43	Z			USFIT	354 62
576.90	Z			USMEDEE	30.21
				USSOCEE	129.17
2,083.33					**514.00**
	Direct Deposit:	1,569.33	**Net:**	1,569 33	
	Period End Date 5/23/2006	Job Code EXVP			
2,083.33	Z			USFIT	354.62
				USMEDEE	30 21
				USSOCEE	129 17
2,083.33					**514.00**
	Direct Deposit:	1,569.33	**Net:**	1,569.33	
	Period End Date 6/8/2006	Job Code EXVP			
2,083 33	Z	HDHP2	121 02	USFIT	317.54
		VDEN	27.33	USMEDEE	28 06
				USSOCEE	119.97

EMPLOYEE		EARNINGS			
Name	**Number**	**Code**	**Pcs**	**Hours**	**Payrate**
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200606151		Pay Date 6/15/2006
				86.67	
Check Printed: 186229			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200606301		Pay Date 6/30/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 187928			**Check Amount:** 0.00		
Corrales, Larry R	12909	Pay No: 1	PerControl 200607141		Pay Date 7/14/2006
		REG		78.67	24.0375
		SICK		8.00	24.0375
				86.67	
Check Printed: 189580			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200607311		Pay Date 7/31/2006
		OTHER		86.67	
		REG			36.0563
				86.67	
Check Printed: 191184			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200608151		Pay Date 8/15/2006
		REG		70.67	36.0563
		VAC		16.00	36.0563
				86.67	
Check Printed: 192828			**Check Amount:** 0.00		

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page						
	Period End Date 6/8/2006		Job Code EXVP		*Continued from Previous Page*	
2,083.33				**148.35**		**465.57**
	Direct Deposit:		1,469.41	**Net:**	1,469.41	
	Period End Date 6/23/2006		Job Code EXVP			
2,083.33	Z		HDHP2	126.53	USFIT	316.16
			VDEN	27.33	USMEDEE	27.98
					USSOCEE	119.63
2,083.33				**153.86**		**463.77**
	Direct Deposit:		1,465.70	**Net:**	1,465.70	
	Period End Date 7/8/2006		Job Code EXVP			
1,891.03	Z		HDHP2	126.53	USFIT	316.16
192.30	Z		VDEN	27.33	USMEDEE	27.98
					USSOCEE	119.63
2,083.33				**153.86**		**463.77**
	Direct Deposit:		1,465.70	**Net:**	1,465.70	
	Period End Date 7/23/2006		Job Code EXVP			
1,041.67	Z		HDHP2	126.53	USFIT	865.82
3,125.00	Z		VDEN	27.33	USMEDEE	58.19
					USSOCEE	248.79
4,166.67				**153.86**		**1,172.80**
	Direct Deposit:		2,840.01	**Net:**	2,840.01	
	Period End Date 8/8/2006		Job Code EXVP			
2,548.10	Z		HDHP2	126.53	USFIT	576.58
576.90	Z		VDEN	27.33	USMEDEE	43.08
					USSOCEE	184.21
3,125.00				**153.86**		**803.87**
	Direct Deposit:		2,167.27	**Net:**	2,167.27	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200608311		Pay Date 8/31/2006
		REG		22.67	36.0563
		SICK		24.00	36.0563
		VAC		37.00	36.0563
				83.67	
Check Printed: 194420			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200609151		Pay Date 9/15/2006
		REG		86.67	24 0375
				86.67	
Check Printed: 196021			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200609291		Pay Date 9/29/2006
		REG		86 67	24.0375
				86.67	
Check Printed: 197593			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200610131		Pay Date 10/13/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 199149			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200610311		Pay Date 10/20/2006
		BRMGR			

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page						
	Period End Date 8/23/2006		Job Code EXVP			
817.40	Z		HDHP2	126.53	USFIT	549.53
865.35	Z		VDEN	27.33	USMEDEE	41.51
1,334 08	Z				USSOCEE	177.50
3,016.83				**153.86**		768.54
	Direct Deposit:		2,094.43	**Net:**	2,094.43	
	Period End Date 9/8/2006		Job Code EXVP			
2,083.33	Z		HDHP2	126.53	USFIT	316.16
			VDEN	27.33	USMEDEE	27.98
					USSOCEE	119.63
2,083.33				**153.86**		**463.77**
	Direct Deposit:		1,465.70	**Net:**	1,465 70	
	Period End Date 9/23/2006		Job Code EXVP			
2,083.33	Z		HDHP2	126.53	USFIT	316.16
			VDEN	27.33	USMEDEE	27.98
					USSOCEE	119.63
2,083.33				**153.86**		**463.77**
	Direct Deposit:		1,465.70	**Net:**	1,465.70	
	Period End Date 10/8/2006		Job Code EXVP			
2,083 33	Z		HDHP2	126 53	USFIT	316.16
			VDEN	27.33	USMEDEE	27.98
					USSOCEE	119.63
2,083.33				**153.86**		**463.77**
	Direct Deposit:		1,465 70	**Net:**	1,465 70	
	Period End Date 10/23/2006		Job Code EXVP			
3,000.00	Z				USFIT	583.79
					USMEDEE	43.50
					USSOCEE	186.00

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200610311		Pay Date 10/20/2006
Check Printed: 54440		**Manual**	**Check Amount:** 2,186.71		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200610311		Pay Date 10/31/2006
		REG		86 67	24 0375
			86.67		
Check Printed: 200710			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200611151		Pay Date 11/15/2006
		REG		86 67	24.0375
			86.67		
Check Printed: 202273			**Check Amount:** 0 00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200611301		Pay Date 11/30/2006
		REG		86.67	24 0375
			86.67		
Check Printed: 203747			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200612151		Pay Date 12/15/2006
		REG		86.67	24.0375
			86.67		
Check Printed: 205302			**Check Amount:** 0.00		

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page					
	Period End Date 10/23/2006	Job Code EXVP		*Continued from Previous Page*	
3,000.00					813.29
	Direct Deposit:	0.00	**Net:**	2,186.71	
	Period End Date 10/23/2006	Job Code EXVP			
2,083.33	Z	HDHP2	126 53	USFIT	316.16
		VDEN	27.33	USMEDEE	27.98
				USSOCEE	119.63
2,083.33			153.86		463.77
	Direct Deposit:	1,465.70	**Net:**	1,465.70	
	Period End Date 11/8/2006	Job Code EXVP			
2,083.33	Z	HDHP2	126 53	USFIT	316.16
		VDEN	27.33	USMEDEE	27.98
				USSOCEE	119.63
2,083.33			153.86		463.77
	Direct Deposit:	1,465.70	**Net:**	1,465.70	
	Period End Date 11/23/2006	Job Code EXVP			
2,083 33	Z	HDHP2	126.53	USFIT	316 16
		VDEN	27.33	USMEDEE	27.98
				USSOCEE	119.63
2,083.33			153.86		463.77
	Direct Deposit:	1,465.70	**Net:**	1,465 70	
	Period End Date 12/8/2006	Job Code EXVP			
2,083.33	Z	HDHP2	126.53	USFIT	316.16
		VDEN	27.33	USMEDEE	27.98
				USSOCEE	119.63
2,083.33			153.86		463.77
	Direct Deposit:	1,465.70	**Net:**	1,465.70	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200612291		Pay Date 12/29/2006
		REG		86.67	24.0375
				86.67	
Check Printed: 206812			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200701121		Pay Date 1/12/2007
		REG		86.67	24.0375
				86.67	
Check Printed: 208342			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200701311		Pay Date 1/31/2007
		REG		14.67	24.0375
		SICK		8.00	24.0375
		VAC		32.00	24.0375
				54.67	
Check Printed: 209861			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200703151		Pay Date 3/15/2007
Check Printed: Adjustment			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1	PerControl 200703151		Pay Date 3/5/2007
		REG		48.00	24.0375
		VAC		15.32	24.0375

Current Amt	Shift	Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page						
	Period End Date 12/23/2006		Job Code EXVP			
2,083.33	Z		HDHP2	126.53	USFIT	316.16
			VDEN	27.33	USMEDEE	27 98
					USSOCEE	119.63
2,083.33				**153.86**		**463.77**
	Direct Deposit:		1,465 70	**Net:**	1,465.70	
	Period End Date 1/8/2007		Job Code EXVP			
2,083 33	Z		HDHP2	126 53	USFIT	310.58
			VDEN	27 33	USMEDEE	27.98
					USSOCEE	119 63
2,083.33				**153.86**		**458.19**
	Direct Deposit:		1,471.28	**Net:**	1,471 28	
	Period End Date 1/23/2007		Job Code EXVP			
352 63	Z		HDHP2	126.53	USFIT	141.92
192 30	Z		VDEN	27 33	USMEDEE	16.82
769 20	Z				USSOCEE	71.94
1,314.13				**153.86**		**230.68**
	Direct Deposit:		929.59	**Net:**	929.59	
	Period End Date 3/8/2007		Job Code EXVP			
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 3/8/2007		Job Code EXVP			
1,153 80	Z		HDHP2	379 59	USFIT	126.94
368 21	Z		VDEN	81.99	USMEDEE	15.38
					USSOCEE	65.75

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200703151		Pay Date 3/5/2007
				63.32	
Check Printed: 59249		Manual	**Check Amount:** 852.36		
Corrales, Larry R.	12909	Pay No: 1 LTDUP	PerControl 200712313		Pay Date 12/31/2007
Check Printed: TPSP			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 2 LTDUP	PerControl 200712313		Pay Date 12/31/2007
Check Printed: TPSP			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 LTDUP	PerControl 200712313		Pay Date 12/31/2007
Check Printed: TPSP			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 2 LTDUP	PerControl 200712313		Pay Date 12/31/2007
Check Printed: TPSP			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 1 STDUP	PerControl 200712313		Pay Date 12/31/2007
Check Printed: TPSP			**Check Amount:** 0.00		

Current Amt	Shift / Shift Amt	DEDUCTIONS Code	Amount	TAXES Code	Amount
Continued from previous page					
	Period End Date 3/8/2007	Job Code EXVP	*Continued from Previous Page*		
1,522.01			461.58		208.07
	Direct Deposit:	0.00	**Net:**	852.36	
	Period End Date 12/312007	Job Code EXVP			
7,830 58	Z	LTDUP	7,830.58		
7,830.58			7,830.58		
	Direct Deposit:	0.00	**Net:**	0 00	
	Period End Date 12/31/2007	Job Code EXVP			
2,082 60	Z	LTDUP	2,082.60		
2,082.60			2,082.60		
	Direct Deposit:	0 00	**Net:**	0.00	
	Period End Date 12/31/2007	Job Code EXVP			
2,082.60	Z	LTDUP	2,082.60		
2,082.60			2,082.60		
	Direct Deposit:	0 00	**Net:**	0 00	
	Period End Date 12/31/2007	Job Code EXVP			
2,082.60	Z	LTDUP	2,082.60		
2,082.60			2,082.60		
	Direct Deposit:	0.00	**Net:**	0.00	
	Period End Date 12/31/2007	Job Code EXVP			
4,945 71	Z	RVOD+	-378 35	USMEDEE	71.71
		STDUP	4,945.71	USSOCEE	306.64
4,945.71			4,567.36		378.35
	Direct Deposit:	0.00	**Net:**	0.00	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Company: Allied Home Mortgage Capital Corporation					
Corrales, Larry R.	12909	Pay No: 1	PerControl 200712313		Pay Date 12/31/2007
		LTDUP			
Check Printed: TPSP			**Check Amount:** 0.00		
Corrales, Larry R	12909	Pay No: 2	PerControl 200712313		Pay Date 12/31/2007
		LTDUP			
Check Printed: TPSP			**Check Amount:** 0.00		
Corrales, Larry R.	12909	Pay No: 3	PerControl 200712313		Pay Date 12/31/2007
		LTDUP			
Check Printed: TPSP			**Check Amount:** 0.00		
Group Summary for: Company: Allied Home Mortgage Capital Corporation					
		BNSRG			
		BRMGR			
		LTDUP			
		OTHER			
		PERS	24.00		
		REG	4,743.19		
		SICK	68.00		
		STDUP			
		VAC	173.32		
Group Totals:	**Number of Pays**	127	5,008.51		
			Total Check	**mts**	22,531.46

			DEDUCTIONS		TAXES	
Current Amt	Shift	Shift Amt	Code	Amount	Code	Amount
	Continued from previous page					
	Period End Date 12/31/2007		Job Code EXVP			
2,082 60	Z		LTDUP	2,082.60		
2,082.60				**2,082.60**		
	Direct Deposit:		0.00	**Net:**	0.00	
	Period End Date 12/312007		Job Code EXVP			
2,082.60	Z		LTDUP	2,082.60		
2,082.60				**2,082.60**		
	Direct Deposit:		0.00	**Net:**	0 00	
	Period End Date 12/31/2007		Job Code EXVP			
2,082.60	Z		LTDUP	2,082 60		
2,082.60				**2,082.60**		
	Direct Deposit:		0.00	**Net:**	0.00	
25,000 00	Z		AFLAC	232.20	USFIT	41,660.75
66,354.14	Z		HDHP2	2,398.56	USMEDEE	3,156.30
20,326.18	Z		LTDUP	20,326.18	USSOCEE	13,495.85
1,041 67	Z		NTADV	42,450.00		
576 90	Z		RVOD+	-378.35		
116,177 93	Z		STDUP	4,945.71		
1,923.00	Z		VDEN	519.27		
4,945 71	Z					
4,803.13	Z					
241,148.66				**70,493.57**		**58,312.90**
	Total DDAs:	89,810 73		**Total Net:**	112,342 19	

EMPLOYEE		EARNINGS			
Name	Number	Code	Pcs	Hours	Payrate
Report Totals:					
		BNSRG			
		BRMGR			
		LTDUP			
		OTHER			
		PERS		24.00	
		REG		4,743.19	
		SICK		68.00	
		STDUP			
		VAC		173.32	
Group Totals:	**Number of Pays**	**127**	**5,008.51**		
			Total Check Amts		22,531.46

			DEDUCTIONS		TAXES	
Current Amt	Shift	Shift Amt	Code	Amount	Code	Amount
25,000 00	Z		AFLAC	232.20	USFIT	41,660.75
66,354.14	Z		HDHP2	2,398 56	USMEDE	3,156.30
20,326.18	Z		LTDUP	20,326.18	E	13,495.85
1,041 67	Z		NTADV	42,450.00	USSOCEE	
576.90	Z		RVOD+	-378.35		
116,177.93	Z		STDUP	4,945 71		
1,923 00	Z		VDEN	519.27		
4,945.71	Z					
4,803.13	Z					
241,148.66				70,493.57		58,312.90
	Total DDAs:	89,810.73		Total Net:		112,342.19

EXHIBIT 4

PERSONAL ACTION FORMS

March 5, 2007
August 24, 2006
June 24, 2006
September 2, 2004

[see foldout pages]

ALLIED HOME MORTGAGE CAPITAL CORPORATION

COPY

PERSONNEL ACTION FORM

Please complete all applicable sections and fax to 713-996-8368
Questions regarding the PAF? Call ISource HR at 713-996-9311

EMPLOYEE INFORMATION (This section MUST be completed for any change)

EMPLOYEE NAME	EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	BRANCH NUMBER	EFFECTIVE DATE
CORRALES, LARRY	12909		23	5-Mar-07

ADDRESS	COMPANY

TYPE OF CHANGE (Select all that apply and complete the corresponding section below)

☐ Personal Information ☐ Job Information ☐ Salary Information ☐ Branch/Dept Change ☐ Rehire ☐ HR/Status Change
☑ Termination ☐ Other - Explain

PERSONAL INFORMATION (Legal documentation must be submitted for name or SSN change-see instructions for acceptable documents)

NEW NAME	REASON FOR NAME CHANGE	NEW SSN

NEW MAILING ADDRESS	COUNTY	PHONE NUMBER

JOB INFORMATION

NEW JOB TITLE	NEW JOB CLASS

Severance Pay: yes ✓ no amount
Wages in lieu of notice: yes ✓ no amount (enter Only)
Vacation payout: yes ✓ no hours
Pay final wages at ✓ termination next payroll

SALARY INFORMATION

CURRENT RATE/FREQUENCY	NEW RATE/FREQUENCY

☐ Promotion ☐ Adjustment
☐ Other - Explain

PAY TYPE CHANGE (Check ONLY one)

☐ Salary to Commission ☐ Commission to Salary ☐ Hourly to Commission ☐ Commission to Hourly ☐ Salary to Hourly ☐ Hourly to Salary

BRANCH/DEPARTMENT CHANGE

CURRENT BRANCH/DEPARTMENT	NEW BRANCH/DEPARTMENT	NEW TAXING STATE (IF APPLICABLE)

REHIRE

REHIRE DATE	NEW JOB TITLE	NEW PAY RATE	EMPLOYMENT CATEGORY	PAY TYPE
			☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

HR STATUS CHANGE

LEAVE OF ABSENCE (Must attach LEAVE forms)		RETURN FROM LEAVE
☐ Medical Leave	☐ Workers' Comp	☐ Return From Leave - Date
☐ FMLA	☐ Military	*MUST ATTACH DOCTOR RELEASE IF LEAVE WAS FOR MEDICAL, FMLA (MEDICAL) OR WORKERS' COMPENSATION
	☐ Other - Explain	

TERMINATION

TERMINATION DATE	LAST DAY WORKED	VACATION OWED	MONIES DUE COMPANY	REHIRE ELIGIBILITY
5-Mar-07	5-Mar-07			☐ Yes ☑ No - Explain misconduct

TERMINATION REASON (Check ONLY one)

VOLUNTARY TERMINATION (Notice MUST be attached)		INVOLUNTARY TERMINATION (Attach all documentation that supports termination)		
☐ Abandoned Job	☐ Personal Reasons	☐ Branch Closure	☐ Layoff	☑ Misconduct - Explain
☐ Accepted Another Job	☐ Resigned With Two Week Notice	☐ Temp Job Completed	☐ Lack of Work	☐ Lack of Production
☐ Quit w/o Notice	☐ Relocation	☐ Death	☐ Unsatisfactory Performance	☐ Excessive Absenteeism - Explain
☐ Retirement	☐ Failure to Return from Leave	☐ Job Eliminated	☐ Violation of Company Policy - Explain	
☐ Other - Explain		☐ Other - Explain		

COMMENTS/OTHER

EMPLOYEE INTENTIONALLY DELETED LARGE NUMBER OF YELLOW SIGN DOCUMENTS FROM THE WEB PORTAL. HE FAILED TO REPORT IT TO ANYONE IN IT, AND FAILED TO RESPOND TO GENERAL COUNSEL'S E-MAIL, ETC. ADDITIONALLY, ERIC KLENK PHONED HIM ON HIS CELL 3/5/07 AND ASKED THAT HE CONTACT ME ASAP, YET NO RESPONSE

SIGNATURES - BRANCH MANAGER MUST SIGN FOR ANY CHANGE (If employee is voluntarily resigning, the employee must either submit a resignation letter or sign this form)

EMPLOYEE	DATE	BRANCH MANAGER	DATE
		E. Hodge	

FOR HUMAN RESOURCES USE ONLY:

RECEIVED	DATE	PAYROLL	DATE	BENEFITS	DATE	HR RIGHT	DATE
		3/8/07		3/12/07			

Allied / Corrales
000832

ALLIED HOME MORTGAGE CAPITAL CORPORATION

PERSONNEL ACTION FORM

Please complete all applicable sections and fax to 713-353-0825
Questions regarding the PAF? Call iSource HR at 713-353-0400

EMPLOYEE INFORMATION (This section MUST be completed for any change)

EMPLOYEE NAME	EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	BRANCH NUMBER	EFFECTIVE DATE
CORRALLES, LARRY	12909		028	24-Aug-06

ADDRESS	COMPANY

TYPE OF CHANGE (Select all that apply and complete the corresponding section below)

☐ Personal Information ☐ Job Information ☐ Salary Information ☐ Branch/Dept Change ☐ Rehire ☐ HR/Status Change
☐ Termination ☐ Other - Explain

PERSONAL INFORMATION (Legal documentation must be submitted for name or SSN change-see instructions for acceptable documents)

NEW NAME	REASON FOR NAME CHANGE	NEW SSN

NEW MAILING ADDRESS	COUNTY	PHONE NUMBER

JOB INFORMATION

NEW JOB TITLE	NEW JOB CLASS	EMPLOYMENT CATEGORY	PAY TYPE CHANGE
		☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

SALARY INFORMATION

CURRENT RATE/FREQUENCY	NEW RATE/FREQUENCY	INCREASE %	AMOUNT & DATE OF LAST INCREASE	REASON FOR CHANGE
$75,000.00	$90,000.00	20.00%		☑ Merit ☐ Demotion ☐ Promotion ☐ Adjustment ☐ Other - Explain

PAY TYPE CHANGE (Check ONLY one)

☐ Salary to Commission ☐ Commission to Salary ☐ Hourly to Commission ☐ Commission to Hourly ☐ Salary to Hourly ☐ Hourly to Salary

BRANCH/DEPARTMENT CHANGE

CURRENT BRANCH/DEPARTMENT	NEW BRANCH/DEPARTMENT	NEW TAXING STATE (IF APPLICABLE)

REHIRE

REHIRE DATE	NEW JOB TITLE	NEW PAY RATE	EMPLOYMENT CATEGORY	PAY TYPE
			☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

HR STATUS CHANGE

LEAVE OF ABSENCE (Must attach LEAVE forms)		RETURN FROM LEAVE
☐ Medical Leave ☐ FMLA	☐ Workers' Comp ☐ Military ☐ Other - Explain	☐ Return From Leave - Date: *MUST ATTACH DOCTOR RELEASE IF LEAVE WAS FOR MEDICAL, FMLA (MEDICAL) OR WORKERS' COMPENSATION

TERMINATION

TERMINATION DATE	LAST DAY WORKED	VACATION OWED	MONIES DUE COMPANY	REHIRE ELIGIBILITY
				☐ Yes ☐ No - Explain

TERMINATION REASON (Check ONLY one)

VOLUNTARY TERMINATION (Memo MUST be attached)

☐ Abandoned Job ☐ Personal Reasons
☐ Accepted Another Job ☐ Resigned With Two Week Notice
☐ Quit w/o Notice ☐ Relocation
☐ Retirement ☐ Failure to Return from Leave
☐ Other - Explain

INVOLUNTARY TERMINATION (Attach all documentation that supports termination)

☐ Branch Closure ☐ Layoff ☐ Misconduct - Explain
☐ Temp Job Completed ☐ Lack of Work ☐ Lack of Production
☐ Death ☐ Unsatisfactory Performance ☐ Excessive Absenteeism/Tardiness
☐ Job Eliminated ☐ Violation of Company Policy - Explain
☐ Other - Explain

COMMENTS/OTHER

For Jan Hodge, if Larry was not moved to Houston by 9/1, his pay is to be reduced to his old salary.

SIGNATURES - BRANCH MANAGER MUST SIGN FOR ANY CHANGE (If employee is voluntarily resigning, the employee must either submit a resignation letter or sign this form)

EMPLOYEE	DATE	BRANCH MANAGER	DATE
		Jan Hodge	9/6/06

FOR HUMAN RESOURCES USE ONLY:

RECEIVED	DATE	PAYROLL	DATE	BENEFITS	DATE	ELIGIBLE	DATE

Allied / Corrales
000033

ALLIED HOME MORTGAGE CAPITAL CORPORATION

PERSONNEL ACTION FORM

Please complete all applicable sections and fax to 713-353-0485
Questions regarding the PAF? Call ESource HR at 713-353-0400

EMPLOYEE INFORMATION (This section MUST be completed for any change)

EMPLOYEE NAME	EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	BRANCH NUMBER	EFFECTIVE DATE
CORRALES, LARRY	12509		028	6/24/06

ADDRESS	COMPANY

TYPE OF CHANGE (Select all that apply and complete the corresponding section below)

☐ Personal Information ☐ Job Information ☐ Salary Information ☐ Branch/Dept Change ☐ Rehire ☐ HR/Status Change
☐ Termination ☐ Other - Explain

PERSONAL INFORMATION (Legal documentation must be submitted for name or SSN change-see instructions for acceptable documents)

NEW NAME	REASON FOR NAME CHANGE	NEW SSN

NEW MAILING ADDRESS	COUNTY	PHONE NUMBER

JOB INFORMATION

NEW JOB TITLE	NEW JOB CLASS	EMPLOYMENT CATEGORY	PAY TYPE CHANGE
		☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

SALARY INFORMATION

CURRENT RATE/FREQUENCY	NEW RATE/FREQUENCY	INCREASE %	AMOUNT & DATE OF LAST INCREASE	REASON FOR CHANGE
35K/YR.00	37K/YR.00	5.88%		☐ Merit ☐ Demotion ☐ Promotion ☐ Adjustment ☐ Other - Explain

PAY TYPE CHANGE (Check ONLY one)

☐ Salary to Commission ☐ Commission to Salary ☐ Hourly to Commission ☐ Commission to Hourly ☐ Salary to Hourly ☐ Hourly to Salary

BRANCH/DEPARTMENT CHANGE

CURRENT BRANCH/DEPARTMENT	NEW BRANCH/DEPARTMENT	NEW TAXING STATE (IF APPLICABLE)

REHIRE

REHIRE DATE	NEW JOB TITLE	NEW PAY RATE	EMPLOYMENT CATEGORY	PAY TYPE
			☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

HR STATUS CHANGE

LEAVE OF ABSENCE (Must provide LEAVE form)	RETURN FROM LEAVE
☐ Medical Leave ☐ FMLA ☐ Workers' Comp ☐ Military ☐ Other - Explain	☐ Return From Leave - Date MUST ATTACH DOCTOR RELEASE IF LEAVE WAS FOR MEDICAL, FMLA (MEDICAL) OR WORKERS' COMPENSATION

TERMINATION

TERMINATION DATE	LAST DAY WORKED	VACATION OWED	MONIES DUE COMPANY	REHIRE ELIGIBILITY
				☐ Yes ☐ No - Explain

VOLUNTARY TERMINATION (Notice MUST be attached)	TERMINATION REASON (Check ONLY one)		
	INVOLUNTARY TERMINATION (Attach all documentation that supports termination)		
☐ Abandoned Job ☐ Accepted Another Job ☐ Quit w/o Notice ☐ Retirement ☐ Other - Explain ☐ Personal Reasons ☐ Resigned With Two Week Notice ☐ Relocation ☐ Failure to Return from Leave	☐ Branch Closure ☐ Temp Job Completed ☐ Death ☐ Job Eliminated ☐ Other - Explain ☐ Layoff ☐ Lack of Work ☐ Unsatisfactory Performance ☐ Violation of Company Policy - Explain		☐ Misconduct - Explain ☐ Lack of Production ☐ Excessive Absenteeism/Tardiness

COMMENTS/OTHER

HR

SIGNATURES - BRANCH MANAGER MUST SIGN FOR ANY CHANGE (If employee is voluntarily resigning, the employee must either submit a resignation letter or sign this form)

EMPLOYEE	DATE	BRANCH MANAGER	DATE
		Ek for J. Hadey	7/12/06

FOR HUMAN RESOURCES USE ONLY:

RECEIVED	DATE	PAYROLL	DATE	BENEFITS	DATE	HR MGMT	DATE
		Cpeters	7/14/06				

Allied / Corrales
000834

Personnel Action Form rev

ALLIED
HOME MORTGAGE
CAPITAL CORPORATION

PERSONNEL ACTION FORM

Please complete all applicable sections and fax to 713-996-8768
Questions regarding the PAF? Call [Source HR at 713-996-9311

EMPLOYEE INFORMATION (This section MUST be completed for any change)

EMPLOYEE NAME	EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	BRANCH NUMBER	EFFECTIVE DATE
[illegible] Corrales	17909		1651	2-Sep-04

ADDRESS

COMPANY

TYPE OF CHANGE (Select all that apply and complete the corresponding section below)

☐ Personal Information ☐ Job Information ☐ Salary Information ☐ Branch/Dept Change ☐ Rehire ☐ HR/Status Change
☐ Termination ☐ Other - Explain

PERSONAL INFORMATION (Legal documentation must be submitted for name or SSN change-see instructions for acceptable documents)

NEW NAME	REASON FOR NAME CHANGE	NEW SSN
NEW MAILING ADDRESS	COUNTY	PHONE NUMBER

JOB INFORMATION

NEW JOB TITLE	NEW JOB CLASS	EMPLOYMENT CATEGORY	PAY TYPE CHANGE
[illegible] Specialist-Pre Closer		☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

SALARY INFORMATION

COMPENSATION FREQUENCY	NEW SALARY/FREQUENCY	INCREASE $	% AMOUNT	DATE OF LAST INCREASE	REASON FOR CHANGE
Hourly	$50,000.00	$10,000.00			☐ Merit ☐ Promotion ☐ Other - Explain ☐ Demotion ☐ Adjustment

PAY RATE CHANGE (Check ONLY one)

☐ Salary to Commission ☐ Commission to Salary ☐ Hourly to Commission ☐ Commission to Hourly ☐ Salary to Hourly ☐ Hourly to Salary

BRANCH/DEPARTMENT CHANGE

CURRENT BRANCH/DEPARTMENT	NEW BRANCH/DEPARTMENT	NEW SUPERVISOR/MANAGER

HR

REHIRE

FORMER JOB TITLE	NEW JOB TITLE	NEW PAY RATE	EMPLOYMENT CATEGORY	PAY TYPE
			☐ Full-Time Regular ☐ Part-Time Regular	☐ Hourly ☐ Commission Only ☐ Salary

HR STATUS CHANGE

LEAVE OF ABSENCE (Must attach LEAVE form)	RETURN FROM LEAVE
☐ Medical Leave ☐ FMLA ☐ Workers' Comp ☐ Military ☐ Other - Explain	☐ Return From Leave - Date: *MUST ATTACH DOCTOR RELEASE IF LEAVE WAS FOR MEDICAL, FMLA (MEDICAL) OR WORKERS' COMPENSATION

TERMINATION

RESIGNATION DATE	LAST DAY WORKED	VACATION PAID	BONUS PAID	COMPANY CAR
				☐ Yes ☐ No ☐ Explain

TERMINATION REASON (Select ONLY one)

VOLUNTARY TERMINATION (Select MUST be checked)

☐ Abandoned Job ☐ Accepted Another Job ☐ Quit w/o Notice ☐ Retirement ☐ Other - Explain ☐ Personal Reasons ☐ Resigned W/In Two Week Notice ☐ Relocation ☐ Failure to Return from Leave

INVOLUNTARY TERMINATION (Attach all documentation that supports termination)

☐ Branch Closure ☐ Temp Job Completed ☐ Death ☐ Job Eliminated ☐ Other - Explain ☐ Layoff ☐ Lack of Work ☐ Unsatisfactory Performance ☐ Violation of Company Policy - Explain ☐ Misconduct - Explain ☐ Lack of Production ☐ Excessive Absenteeism/Tardiness

COMMENTS/OTHER

[illegible]

SIGNATURES - BRANCH MANAGER MUST SIGN FOR ANY CHANGE (If employee is voluntarily resigning, the employee must either submit a resignation letter or sign this form)

EMPLOYEE	DATE	BRANCH MANAGER	DATE

FOR HUMAN RESOURCES USE ONLY:

RECEIVED	DATE	PAYROLL	DATE	BENEFITS	DATE	IT/MGMT	DATE

EXHIBIT 5

W-2 FORMS

Copy D - for Employer			
a. Control number	1 Wages, tips, other compensation 21514.18	2 Federal income tax withheld 4527.74	
	3 Social security wages 21514.18	4 Social security tax withheld 1333.88	
b Employer ID number 76-0340141	5 Medicare wages and tips 21514.18	6 Medicare tax withheld 311.94	
c Employer's name, address, and ZIP code	ALLIED HOME MORTGAGE CAPITAL CORPORATION 6110 Pinemont Dr , Suite 215 Houston TX 77092		
d Employee's social security number	[redacted]-9529		
e Employee's name, address, and ZIP code	Larry R Corrales [redacted] [redacted]		
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans		
12a	13 Stat Emp Ret plan 3rd-party sick pay		
12b			
12c	14 Other		
12d			
TX 15 State Employer's state I D #	16 State wages, tips, etc 21514.18	17 State income tax	
18 Local wages, tips, etc	19 Local income tax	20 Locality name	

Form W-2 Wage & Tax Statement 2002 Dept. of the Treasury-IRS OMB No. 1545-0008

Allied/Corrales
000036

Copy D - for Employer		
a Control number	1 Wages, tips, other compensation 31846 38	2 Federal income tax withheld 6910 14
	3 Social security wages 31846 38	4 Social security tax withheld 1974 46
b Employer ID number 76-0340141	5 Medicare wages and tips 31846.38	6 Medicare tax withheld 461 78
c Employer's name, address, and ZIP code	ALLIED HOME MORTGAGE CAPITAL CORPORATION 6110 Pinemont Dr., Suite 215 Houston TX 77092	
d Employee's social security number	[redacted]-9529	
e Employee's name, address, and ZIP code	Larry R Corrales [redacted] [redacted]	
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	
12a	13 Stat Emp Ret plan 3rd-party sick pay	
12b		
12c	14 Other	
12d		
TX	31846.38	
15 State Employer's state I D #	16 State wages, tips, etc	17 State income tax
18 Local wages, tips, etc	19 Local income tax	20 Locality name

Form W-2 Wage & Tax Statement 2003 Dept. of the Treasury-IRS OMB No. 1545-0008

Allied/Corrales
000037

Copy D - for Employer		
a Control number	1 Wages, tips, other compensation 24054.04	2 Federal income tax withheld 4007.15
b Employer ID number 76-0340141	3 Social security wages 24054 04	4 Social security tax withheld 1491 37
	5 Medicare wages and tips 24054.04	6 Medicare tax withheld 348.75
c Employer's name, address, and ZIP code	ALLIED HOME MORTGAGE CAPITAL CORPORATION 6110 Pinemont Dr., Suite 215 Houston TX 77092	
d Employee's social security number	[redacted]-9529	
e Employee's name, address, and ZIP code	Larry R Corrales [redacted] [redacted]	
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	
12a 12b 12c 12d	13 Stat Emp Ret plan 3rd-party sick pay 14 Other	
TX 15 State Employer's state I D #	25054.04 16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc	19 Local income tax	20 Locality name

Form W-2 Wage & Tax Statement 2004 Dept. of the Treasury-IRS OMB No. 1545-0008

Allied/Corrales
000038

Copy D - for Employer		
a Control number	1 Wages, tips, other compensation 56252.07	2 Federal income tax withheld 9901.34
d Employee's SSN [redacted]-9529	3 Social security wages 56252.07	4 Social security tax withheld 3487.71
b Employer ID number 76-0340141	5 Medicare wages and tips 56252.07	6 Medicare tax withheld 815.70
c Employer's name, address, and ZIP code ALLIED HOME MORTGAGE CAPITAL CORPORATION 6110 PINEMONT DR., SUITE 215 HOUSTON TX 77092		
e Employee's name, address, and ZIP code LARRY R CORRALES [redacted]		
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	
12a 12b 12c 12d	13 Stat. Emp Ret plan 3rd-party sick pay 14 Other	
TX 15 State Employer's state I.D.#	56252.07 16 State wages, tips, etc	17 State income tax
18 Local wages, tips, etc	19 Local income tax	20 Locality name

Form W-2 Wage & Tax Statement 2005 Dept. of the Treasury-IRS OMB No. 1545-0008

Allied/Corrales
000039

Copy D - for Employer

a Control number	1 Wages, tips, other compensation	2 Federal income tax withheld
	74909.90	15734.94
d Employee's SSN [redacted]-9529	3 Social security wages	4 Social security tax withheld
	74909.90	4644.47
b Employer ID number	5 Medicare wages and tips	6 Medicare tax withheld
76-0340141	74909.90	1086.24

c Employer's name, address, and ZIP code

ALLIED HOME MORTGAGE CAPITAL CORPORATION
6110 PINEMONT DR., SUITE 215
HOUSTON TX 77092

e Employee's name, address, and ZIP code

LARRY R CORRALES
[redacted]

7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	

12a	13 Stat Emp. Ret plan 3rd-party sick pay
12b	
12c	14 Other
12d	

TX		74909.90	
15 State	Employer's state I D #	16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc.		19 Local income tax	20 Locality name

Form W-2 Wage & Tax Statement 2006 Dept. of the Treasury-IRS OMB No. 1545-0008

Allied/Corrales
000040

Copy D - for Employer		
a Employee's SSN [redacted]-9529	1 Wages, tips, other compensation 9095.88	2 Federal income tax withheld 579.44
d Control number	3 Social security wages 9095.88	4 Social security tax withheld 563 967
b Employer ID number 76-0340141	5 Medicare wages and tips 9095.88	6 Medicare tax withheld 131.89
c Employer's name, address, and ZIP code ALLIED HOME MORTGAGE CAPITAL CORPORATION 6110 PINEMONT DR., SUITE 215 HOUSTON TX 77092		
e Employee's name, address, and ZIP code LARRY R CORRALES [redacted]		
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	
12a	13 Stat Emp Ret plan 3rd-party sick pay X	
12b	14 Other	
12c		
12d		
TX 15 State Employer's state I D #	9095 88 16 State wages, tips, etc	17 State income tax
18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form W-2 Wage & Tax Statement 2007 Dept. of the Treasury-IRS OMB No 1545-0008

Allied/Corrales
000041

APPENDIX H

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
236th JUDICIAL DISTRICT

CAUSE NO. 236-231317-08

[Filed February 3, 2009]

LARRY CORRALES	)
	)
ALLIED HOME MORTGAGE CAPITAL CORP., and THE YELLOW SIGN COMPANY	)

RESPONSE TO MOVANTS' MOTION TO TRANSFER VENUE AND MOTION TO COMPEL ARBITRATION

Now Comes Larry Corrales and files this Motion for Continuance and, subject thereto, Response to Movants' Motion to Transfer Venue and Motion to Compel Arbitration, in support of which would respectfully show the Court the following:

I. FACTUAL BACKGROUND

Larry Corrales worked for Allied initially as a Branch Manager. However, in 2004, Mr. Corrales began working as Vice President, National Manager of the Yellow Sign, a job totally separate and apart from

his position as Branch Manager, with different compensation,

As Vice President of the affiliated Yellow Sign, Larry Corrales created a program to provide potential borrowers a way to sell their home without using a real estate agent. Larry was a hard working and profitable employee. In November 2006, Larry was diagnosed with a brain tumor. Prior to that time, Larry had been promised a bonus based upon his excellent work performance. Larry had to have brain surgery and his bonus never materialized. He had brain surgery on January 11, 2007. On February 26, 2007, Larry was released to work light duty. He had substantial problems with his vision following his brain surgery, but was able to perform the essential functions of his job, with our without accommodation. Upon his return, the company, obviously looking for an excuse to terminate Larry, terminated him for allegedly removing information from the company's computer without authorization. Yet Larry did work that he was authorized to do. The company's termination of Larry from the position of Vice President was a pretext for discrimination.

II. NO ENFORCEABLE ARBITRATION AGREEMENT

A two step inquiry governs whether parties should be compelled to arbitrate. *In re Oakwood Mobile Homes, Inc.*, 981 S.W.2d 571, 573 (Tex. 1999) (orig. proceeding). First the Court must determine whether there exists a valid arbitration agreement. *Id.* Once the Court does so, it must consider whether the agreement covers the claims at issue. *Id.* "[A] state court must initially determine-through the neutral

application of its own contract law-whether an enforceable agreement exists in the first instance, and whether 'generally applicable contract defenses . . . may be applied to invalidate arbitration agreements without contravening' the policies of the FAA." *In re PolyAmerica, LP*, 262 S.W.3d 337, 348 (Tex. 2008), citing *Doctor's Assocs., Inc. v. Casarotto* (1996).

A. No Valid Agreement

1. Agreement Produced is Not Applicable

As a Branch Manager, Larry had an employment agreement with Allied that governed that relationship. It has been produced by Defendants and is attached as Exhibit 2 to Defendants' Motion to Transfer Venue and Compel Arbitration. That agreement specifically relates to the job of Branch Manager and is even titled "Employment Agreement (Branch Manager)." It sets forth the job duties of a Branch Manager and specifies the compensation that Larry would receive as Branch Manager. The agreement does not mention any other job, job title, job function or compensation other than as relates to Branch Manager.

The agreement itself defines the Scope of Employment as "[e]mployee shall have the duties and responsibilities associated with the position of Branch Manager." The scope of the agreement does not include any aspect of the job as Vice President, National Manager of the Yellow Sign. The scope of the agreement is limited to the position and duties of Branch Manager and any disputes arising out of performance of that job and those job duties. The position from which Larry was fired and that is the subject of this lawsuit is the position of Vice President

of a different company, The Yellow Sign Company. Exhibit 1 is an email reflecting Larry's position and job title as "Vice Prcsident-National Manager, the YellowSign For Sale By Owner Program." The agreement produced by Defendants is not related in aspect to The Yellow Sign Company or Larry's position as Vice President with the Yellow Sign Company. Exhibits 2, 3 and 4 reflect that Allied and Yellow Sign Company were separate companies with separate meetings of Board of Directors and Shareholders. While the two entities were both the "employer" of Larry Corrales as Vice President of the Yellow Sign Company, there was no existing agreement between either entity and Larry Corrales as Vice President. The Defendants were the drafters of the agreement relied upon by Defendants and could have included other job positions or claims arising from other job positions and did not do so. The affidavit of Larry Corrales, exhibit 5, shows that his job as Vice President did not fall within the parameters of the agreement relied upon by Defendants. As a result, the agreement is construed against the Defendants and is not applicable.

2. If Agreement Was Applicable, Not Valid

Although it is generally accurate to say, as Defendants do, that there exists a strong presumption in favor of arbitration, "the presumption arises only after the party seeking to compel arbitration proves that a valid arbitration agreement exists." *J. M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 227 (Tex. 2003). Thus, making an argument about presumption favoring arbitration to support a claim that an agreement exists is inappropriate and amounts to putting the cart before the horse.

In Texas, arbitration agreements are interpreted under traditional contract principles. *J. M Davidson Inc.*, 128 S.W.3d at 227. "Thus, an employer attempting to enforce an arbitration agreement must show the agreement meets all requisite contract elements." *Id.* at 228. While an exchange of promises to arbitrate could constitute an enforceable arbitration agreement, *In re Halliburton Co.*, 80 S.W.3d 566 (Tex. 2002), there is no such exchange of promises in this case as Allied makes no promise to arbitrate claims in this alleged agreement. Thus, there is no mutuality of promises and no consideration for the contract.

Defendants did not satisfy the threshold burden of proving that a valid arbitration agreement exists, *J.M. Davidson*, 128 S.W.3d at 227, because they could not show that the alleged agreement was "based upon a valid consideration or mutuality of obligation." *In re C&H News*, 133 S.W.3d 642, 647 (Tex. App. – Corpus Christi 2003, no pet.). When illusory promises are all that support a purported bilateral contract there is no mutuality of obligation and thus, there is no contract." *Id., citing Light v. Centel Cellular Co. of Texas*, 883 S.W.2d 642, 645 (Tex. 1994). In this case, the arbitration "agreement" is devoid of consideration, and is therefore unenforceable on its face.

B. Agreement Unconscionable.

In addition to the issue of the existence of the an agreement is the question of unconscionability, which has two aspects. The first is procedural unconscionability, which refers to the circumstances surrounding contract formation. The second is substantive unconscionabitity, which refers to the fairness of the arbitration provision itself. *See In re*

Halliburton Co., 80 S.W.3d at 571. If an arbitration agreement is unconscionable, it should not be enforced.

1. Limits On Statutory Remedies Unconscionable.

An arbitration agreement covering statutory claims is valid so long as the arbitration agreement does not waive the substantive rights and remedies the statute affords and the arbitration procedures are fair, such that the employee may "effectively vindicate his statutory rights." *In re Poly-America, LP*, 262 S.W.3d 337, 351 (Tex. 2008), citing *In re Halliburton*, 80 S.W.3d at 572. Federal courts, analyzing the enforceability of arbitration provisions relating to federal statutory claims, have noted that such contracts are not enforceable when a party is forced to "forgo the substantive rights afforded by the statute," as opposed to merely "submit[ting] to resolution in an arbitral, rather than a judicial, forum." 262 S.W.3d at 351, citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985). In the context of federal claims, either an expression of federal intent to exclude certain categories of claims from arbitration, *see Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991), or the excessive waiver of statutory rights, *see Mitsubishi*, 473 U.S. at 628, 105 S.Ct 3346, may render a particular dispute un-arbitrable. *In re Poly-America, LP*, 262 S.W3d 337, 351 (Tex. 2008).

In the instant case, the agreement produced by Allied excludes recovery of attorney's fees and expert fees to which a plaintiff would be entitled by statute and excludes the award of costs to which a plaintiff would be entitled by statute. The specific waiver of

costs, expert fees and attorney fees renders the agreement unconscionable.

PRAYER

For these reasons Larry Corrales asks the Court to deny Movants' Motion and for such further relief to which he may be justly entitled.

Respectfully submitted,

/s/ _____
Susan E. Hutchison
Texas Bar No. 10354100
hutch@seeyouincourt.com
S. Rafe Foreman
Texas Bar No. 07255200
warriorforjustice@comcast.net
Kern Lewis
Texas Bar No. 12295320
lewis@seeyouincourt.com
Foreman, Lewis & Hutchison, P.C.
611 S. Main Street, Suite 700
Grapevine, Texas 76051
Phone: 817-336-5533
Fax: 817-336-9005

ATTORNEYS FOR LARRY CORRALES

[certificate of service omitted]

APPENDIX I

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
236TH JUDICIAL DISTRICT

CAUSE NO. 236-231317-08

[Filed February 26, 2009]

LARRY CORRALES	)
	)
VS.	)
	)
ALLIED HOME MORTGAGE CAPITAL CORP., and THE YELLOW SIGN COMPANY	)

DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' AMENDED MOTION TO TRANSFER VENUE, FIRST AMENDED ANSWER SUBJECT THERETO, AND MOTION TO COMPEL ARBITRATION

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Allied Home Mortgage Capital Corporation and The Yellow Sign Company ("Defendants") hereby file their Reply to Plaintiff Larry Corrales' ("Plaintiff") Response to Defendants' Amended Motion to Transfer Venue, First Amended Answer subject to the motion to transfer venue, and

Motion to Compel Arbitration, and in support thereof would show the following:

I. Background

Plaintiff sued Defendants in Tarrant County district court for alleged disability discrimination under Texas Labor Code § 21.051 *et. seq.* on or about July 11, 2007. Defendants subsequently moved the Court to transfer venue to Harris County, Texas, and subject to its motion to transfer venue, Defendants moved the Court, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, for entry of an Order staying the action and compelling arbitration of Plaintiff's claims asserted against Defendants, since they are subject to an arbitration agreement between Allied and Plaintiff. *See Defendants' Amended Motion to Transfer Venue, First Amended Answer Subject Thereto, and Motion to Compel Arbitration* ("*Motion to Compel Arbitration*"). Plaintiff filed a response to Defendants' motions on or about February 3, 2009, challenging the validity of the arbitration agreements and its applicability to this dispute.[1] *Plaintiff's Response to Movants' Motion to Transfer Venue and Motion to Compel Arbitration* ("*Plaintiff's Response*"). Defendants' motion to transfer venue and motion to compel arbitration are scheduled for oral hearing on March 5, 2009.

---

[1] Although Plaintiff's response is entitled "Response to Movants' Motion to Transfer Venue and Motion to Compel Arbitration," the substance of Plaintiff's response responds solely to Defendants' Motion to Compel Arbitration and is silent to Defendants' Motion to Transfer Venue. *See Plaintiff's Response*.

II. A valid arbitration agreement exists and applies to this dispute.

Although Defendants have set forth a valid arbitration agreement in their Motion to Compel Arbitration, Plaintiff argues that no valid arbitration agreement exists. *Response*, p. 2. Specifically, Plaintiff challenges Defendants' motion to compel arbitration by asserting that the arbitration agreement contained in Plaintiff's employment agreement "does not include any aspect of [his] job as Vice President, National Manager of the Yellow Sign" and that even if the agreement is applicable to this dispute, the agreement itself is not valid because it lacks consideration and the agreement is unconscionable. *Response*, p. 3. Plaintiff's attempt to evade the arbitration agreement fails.

In essence, Plaintiff is challenging the arbitrability of the current employment dispute. "Arbitrability" refers to the issue of whether an agreement to arbitrate a particular controversy exists. Two types of arbitrability questions exist: questions of substantive arbitrability, which, absent a clear expression to the contrary in the parties' agreement, are answered by the court, and questions of procedural arbitrability, which are decided by the arbitrator. *Commerce Park at DFW Freeport v. Mardian Constr. Co.*, 729 F.2d 334, 338 (5th Cir. 1984). Substantive arbitrability refers to whether the parties have agreed to submit the controversy to arbitration. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83-84 (2002). Two questions of substantive arbitrability exist: 1) whether a valid, binding arbitration agreement between the parties exists; and 2) whether a valid arbitration agreement applies to the dispute before the court. *See*

First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943-46 (1995); *AT & T Technologies, Inc. v. Communications Workers of Am.*, 475 U.S. 643, 651-52 (1986). Here, a valid arbitration exists that applies to Plaintiff's employment discrimination dispute.

A. A valid, binding arbitration agreement exists.

As Defendants' motion to compel arbitration and exhibits thereto prove, a valid arbitration agreement exists. Plaintiff argues in his response that a valid arbitration agreement does not exist because "there is no...exchange of promises in this case as Allied makes no promise to arbitrate claims" and because the agreement is unconscionable. *Response*, p. 4.

A.1. The arbitration agreement is supported by adequate consideration.

Concerning Plaintiff's first argument regarding lack of consideration, Plaintiff's statement that Allied did not promise to arbitrate claims is unsupported and untrue. The arbitration agreement clearly states that "**any** dispute, controversy, claim, or difference **between Employer and Employee**...shall be subject to arbitration." *Exhibit 2 to Motion to Compel Arbitration* (emphasis added). The arbitration clause requires both the employer and the employee to submit all disputes relating to the contract to binding arbitration. *Id.*

Texas law is clear that when both parties to an arbitration agreement are bound to arbitrate, those mutual promises to arbitrate constitute adequate consideration. *In re Halliburton Co.*, 80 S.W.3d 566, 569 (Tex. 2002); *In re Alamo Lumbar Co.*, 23 S.W.3d

577, 579-80 (Tex. App.—San Antonio 2000, pet. denied) (finding that "[s]ince the parties surrendered their rights to trial by jury, these mutual promises supply valid consideration"); *Armstrong v. Associates Int'l Holding Corp.*, 2006 WL 2707431, at * 3 (N.D. Tex.) (concluding that because under the arbitration clause at issue, "all employment disputes" were to be resolved by arbitration and the results from arbitration were final and binding on both the employer and the employee, the arbitration agreement was supported by sufficient consideration).

Unlike the circumstances in *In re C&H News*, cited heavily by Plaintiff, here, the arbitration agreement binds both Allied and Plaintiff. 133 S.W.3d 642, 647 (Tex. App.—Corpus Christi 2003, no pet.). The Court in *In re C&H News* found that the arbitration agreement therein was not supported by consideration because the agreement allowed the employer to "unilaterally amend the types of claims subject to arbitration." *Id.* Unlike the employer in *In re C&H News*, Allied has not reserved the right to unilaterally amend the claims that are subject to arbitration. Therefore, the agreement is not supported only by an illusory promise but rather is supported by mutual promises to arbitrate. Because the arbitration clause at issue binds Allied and Plaintiff, the parties' mutual promises to arbitrate constitute valid consideration and the arbitration agreement is enforceable.

A.2. The arbitration agreement is not unconscionable.

Plaintiff's second argument challenging the validity of the arbitration agreement – that the agreement is unconscionable – similarly fails. Plaintiff argues that

the agreement is unconscionable because it "precludes recovery of attorney's fees and expert fees to which a plaintiff would be entitled by statute and excludes the award of costs to which a plaintiff would be entitled by statute." *Response*, p. 6. "Under Texas law, unconscionability includes two aspects: (1) procedural unconscionability, which refers to the circumstances surrounding the adoption of the arbitration provision, and (2) substantive unconscionability, which refers to the fairness of the arbitration provision itself." *Carter v. Countrywide Credit Industries, Inc.*, 362 F.3d 294, 301 (5th Cir. 2004) (citing *In re Halliburton Co.*, 80 S.W.3d 566, 571 (Tex. 2002)). As the party seeking to invalidate the arbitration agreement, Plaintiff bears the burden of proving both procedural and substantive unconscionability. *Id.*; *In re Halliburton Co.*, 80 S.W.3d at 572 (explaining that both procedural and substantive unconscionability must be proven to invalidate an arbitration agreement). Because Plaintiff has failed to allege, much less provide evidence, of procedural unconscionability, the Court must reject Plaintiff's unconscionability argument.

Additionally, Plaintiff's substantive unconscionability argument fails. Without citing to a single legal authority in support of his proposition, Plaintiff alleges that the "waiver of costs, expert fees and attorney fees renders the [arbitration] agreement unconscionable." *Response*, p. 6. When ascertaining the permissibility of restrictions on a plaintiff's access to statutory rights and remedies, the Court should "analyze the provisions of the actual statute at issue." *In re Poly-America, L.P.*, 262 S.W.3d 337, 349 (Tex. 2008). The statute at issue here – Texas Labor Code § 21.051 *et seq.* – permits the recovery of attorneys' fees, expert fees, and costs. *See* TEX. LABOR CODE

§ 21.259. However, the arbitration agreement states that "[e]ach party shall bear its own costs, expenses and fees, including without limitation, attorneys' fees and experts' fees with respect to any such arbitration." *Exhibit 2 to Motion to Compel Arbitration*. Texas courts have found that limitations of remedies contained in arbitration agreements are permissible. *Pony Express Courier Corp. v. Morris*, 921 S.W.2d 817, 822 (Tex. App.—San Antonio 1996, no writ); *Inv. Partners v. Glamour Shots Licensing, Inc.*, 298 F.3d 314, 318 n. 1 (5th Cir. 2002). Plaintiff has not waived his substantive rights in the arbitration agreement. Plaintiff is also able to "effectively vindicate his statutory rights" under Texas Labor Code § 21.051 *et seq.* in the arbitral forum. *In re Halliburton*, 80 S.W.3d at 572. Furthermore, it is Plaintiff's burden to prove both procedural and substantive unconscionability; since Plaintiff has failed to do so, the Court should enforce the arbitration agreement.

A.3. Even if the arbitration agreement's provision concerning costs, fees, and expenses is unconscionable, the Court should nevertheless compel arbitration.

Without waiver of the foregoing, should the Court find that the arbitration agreement's provision that each party bear its own costs, expenses, and fees is unconscionable, the Court should sever the unconscionable provision of the arbitration agreement and compel arbitration. *In re Poly-America, L.P.*, 262 S.W.3d at 359-60. "An illegal or unconscionable provision of a contract may generally be severed so long as it does not constitute the essential purpose of the agreement." *Id.* at 360 (citing *Williams v. Williams*, 569 S.W.2d 867, 871 (Tex. 1978)). "The

relevant inquiry is whether or not parties would have entered into the agreement absent the unenforceable provisions." *Id.* (citing *Patrizi v. McAninch*, 269 S.W.2d 343, 348 (Tex. 1954)).

Here, the parties would have entered into the employment agreement absent the provision requiring that each party bear its own costs, fees, and expenses incurred in arbitration. Stated differently, the essential purpose of the agreement is the employment of Plaintiff by Allied. Furthermore, like the agreement in *In re Poly-America, L.P.*, the employment agreement at issue here includes a severability clause, stating

> If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Exhibit 2 to Motion to Compel Arbitration, Bates-label Allied / Corrales 6. As in *In re Poly-America, L.P.*, here, "the intent of the parties, as expressed by the severability clause, is that unconscionable provisions be excised where possible." *In re Poly-America, L.P.*, 262 S.W.3d at 360. Because severing any provision held to be invalid will not defeat the purpose of the agreement, any such provision should be excised and the remainder of the agreement, including the arbitration clause, be enforced.

B. The scope of the arbitration clause covers this dispute.

B.1. The arbitration clause applies to Plaintiff's claims against Allied and Yellow Sign.

The current employment discrimination dispute is arbitrable under the arbitration clause included in Plaintiff's employment agreement. Absent some ambiguity in the parties' contract, the language of the arbitration agreement defines the scope of arbitrable disputes under the FAA. *See E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279 (2002). Plaintiff has not alleged that any ambiguity exists in the contract. Therefore, the arbitration agreement in the employment agreement defines the scope of arbitrable disputes.

Broad arbitration clauses such as the one at issue here include not only those claims that literally arise under the contract, but also **all disputes between the parties "having a significant relationship to the contract regardless of the label attached to the dispute."** *Pennzoil Exploration and Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061, 1067 (5th Cir. 1998) (emphasis added); *See Exhibit 2 to Motion to Compel Arbitration, Bates-labeled Allied/Corrales 4.* Because the agreement here contains a broad arbitration clause, arbitration should not be denied unless the particular controversy is absolutely not covered. *See Emerald Tex., Inc. v. Peel*, 920 S.W.2d 398, 403 (Tex. App. – Houston [1st Dist.] 1996, no writ).

The clear, unambiguous, broad arbitration provision at issue here mandates that this dispute is covered by its terms. The arbitration clause provides:

ARBITRATION AND DISPUTE RESOLUTION

Disputes Subject to Arbitration. With the exception of claims by Employer or Employee for injunctive relief, Employee agrees that **any** dispute, controversy, claim, or difference between Employer and Employee which **directly or indirectly relates to or arises out of this Agreement**, or its breach, **shall be subject to arbitration** in the City of Houston, Texas in accordance with the then governing rules of the American Arbitration Association. It is the intention of the parties that this Agreement shall be enforceable under the Federal Arbitration Act and at common law. Each party shall bear its own costs, expenses and fees, including without limitation, attorneys' fees and experts' fees with respect to any such arbitration. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction.

The types of disputes or controversies intended by the parties to be subject to arbitration shall include, but not be limited to, (i) **any claim which directly or indirectly relates to or arises out of this Agreement**, (ii) any and all torts including defamation, libel, slander, false light, intention infliction of emotional distress, tortuous interference, negligence, assault, battery, invasion of privacy, and any other violation of a legal duty not based in contract which gives rise to damages of whatever nature, (iii) any and all causes of action arising out of or relating to 18 U.S.C. § 1702; 18 U.S.C. §§2510-2513, 2515-2521, 27001-2710, 3117, 3121-3126,; 29 U.S.C. § 621

> *et seq.*; 42 U.S.C. § 1981; 42 U.S.C. § 1983, and (iv) **any and all causes of action that involve or relate to** Title VII or **applicable state or local laws, for discrimination** because of race, color, sex, sexual orientation or preference, religion, national origin, age, marital status, handicap or disability, veteran or citizenship status, or sexual harassment.

See Exhibit 2 to Motion to Compel Arbitration, Bates-labeled Allied / Corrales 4 (emphasis added). The arbitration provision clearly states that **any dispute that directly or indirectly relates to or arises out of this Agreement shall be subject to arbitration**. *See id.* The uncontroverted evidence shows that the current employment discrimination dispute at least indirectly, if not directly, relates to or arises out of Plaintiff's employment contract with Allied.

Plaintiff's assertion that subsequent to the employment agreement at issue, he was hired by Yellow Sign as Vice President is untrue. *Exhibit 1 to Motion to Compel Arbitration*. Plaintiff assumed the additional *role* of Vice-President of Yellow Sign in addition to his responsibilities as an Allied branch manager. *Exhibit 1 to Motion to Compel Arbitration; see also Exhibit 4, Bates-label Allied / Corrales 35* (Allied personnel action form concerning Plaintiff's new role as vice-president of For Sale By Owner). Furthermore, Plaintiff's argument that the arbitration clause is not applicable because "[t]he scope of the agreement does not include any aspect of [his] job as Vice President, National Manager of the Yellow Sign" and "[t]he position from which [Plaintiff] was fired and that is the subject of this lawsuit is the position of Vice President of...Yellow Sign" also fails. *Response*, p. 3.

The uncontroverted evidence shows that Allied - and Plaintiff's employment agreement with Allied - controlled and governed Plaintiff's role as Vice-President of Yellow Sign. All of Plaintiff's paychecks were issued by Allied, not Yellow Sign. *Exhibit 1 to Motion to Compel Arbitration*; *Exhibit 3 to Motion to Compel Arbitration* (Allied check register detailing payments made to Plaintiff). Plaintiff's supervisor was an Allied employee. *Exhibit 1 to Motion to Compel Arbitration*. All of Plaintiff's expenses incurred in his role as Vice-President of Yellow Sign were submitted by Plaintiff through his Allied branch number and were paid for by Allied. *Exhibit E*. Plaintiff and Allied's employment agreement remained in force and applied to Plaintiff's role of Vice-President as well as to his role as branch manager after he took on the additional responsibilities as Vice-President of Yellow Sign. Plaintiff admits that the only employment agreement he had was the employment agreement with Allied. *Plaintiff's Original Petition*, p. 5. Plaintiff similarly admits, "I was hired by **Allied** as Vice President, National Manager of the affiliated The Yellow Sign Company." *Affidavit of Larry Corrales, Exhibit 5 to Response* (emphasis added). Likewise, pertinent Yellow Sign documents show that the program is sponsored by and is a division of Allied. *See Exhibits A, B, & C.*

Finally, Plaintiff's employment discrimination claim against Allied and Yellow Sign arises from Allied's termination of his employment. *Exhibit 2 to Motion to Compel Arbitration*; *Exhibit 4, Bates-label Allied/Corrales 32* (Allied personnel action form regarding Plaintiff's involuntary termination for misconduct). The basis of Plaintiff's lawsuit centers around Plaintiff's allegation that Defendants

discriminated against him because of his disability associated with his brain surgery. *Original Petition*, p. 4. Pertinent documents show that Plaintiff requested medical leave from Allied, not Yellow Sign, prior to undergoing brain surgery – showing, again, that Plaintiff was employed by Allied. *Exhibit D*. Clearly, this dispute "arises out of or relates to" Plaintiff's employment agreement with Allied since without such agreement, Plaintiff would have no claim against Allied or Yellow Sign. Plaintiff's admissions as well as Defendants' uncontroverted evidence establish that the employment agreement and arbitration provision therein apply to this dispute. Therefore, because the disability discrimination dispute before the Court is explicitly covered by the arbitration clause, the Court should compel Plaintiff to arbitrate his claims.

B.2. Without waiver of the foregoing, even if the Court finds that the arbitration clause does not apply to Plaintiff's claims against Yellow Sign, the Court must compel arbitration of Plaintiff's claims against Allied.

At the very least, the Court must compel arbitration of Plaintiff's claims against Allied. Plaintiff does not dispute that the employment agreement and arbitration clause are applicable to his dispute with Allied; rather, Plaintiff limits his challenge to Defendants' motion to compel arbitration to his assertions that the arbitration provision does not apply to his dispute with Yellow Sign. *See generally Response*. Under the FAA, the Court must compel parties to proceed to arbitration when they have a written agreement to arbitrate. *Bhatia v. Johnston*, 818 F.2d 418 (5th Cir. 1987) (stating that district

courts have no discretion to order arbitration on issues as to which an arbitration agreement applies). Moreover, the employment agreement provides for the severability of arbitrable and non-arbitrable disputes, stating:

> Employee agrees that in the event a dispute, controversy, claim, or difference which is subject to arbitration is alleged or plead in connection with any dispute, controversy, claim, or difference described in this Agreement between Employer and Employee, the **non-arbitrable dispute or claim shall be severable** by either party and litigated in a judicial proceeding separate and apart from the dispute, controversy, claim, or difference subject to arbitration.

Exhibit 2 to Motion to Compel Arbitration, Bates-lable Allied / Corrales 4 (emphasis added). The U.S. Supreme Court has emphasized that piecemeal resolution of claims is ***required*** to give effect to an arbitration agreement. *Moses H. Cone Memorial Hosp.*, 460 U.S. at 20. Therefore, should the Court find that Plaintiff's claims against Yellow Sign are not arbitrable – which Defendants directly contest – the Court must nevertheless compel arbitration of Plaintiff's claims against Allied.

Defendants, as the parties seeking arbitration, have carried their initial burden of establishing the existence of an arbitration agreement between the parties and that the controversy at issue falls within the scope of the agreement. *In re Kepka*, 178 S.W.3d 279 (Tex. App.—Houston [1st Dist.] 2005). Plaintiff, the party opposing arbitration, has failed to satisfy his

burden to present evidence that there was no agreement to arbitrate and/or that the dispute is not arbitrable. *Id.* Therefore, the Court should grant Defendants' motion to compel arbitration.

III. Prayer for Relief

THEREFORE, Defendants respectfully request that after the hearing on their Motion to Transfer Venue, the Court grant Defendants' motion and transfer this case to Harris County, Texas. Defendants further request that the Court grant their Motion to Compel Arbitration. Finally, Defendants request that Plaintiff take nothing by reason of his suit, that Defendants recover their costs of court, and for any other relief that Defendants may show themselves to be justly entitled.

Respectfully submitted,

McGinnis, Lochridge & Kilgore, L.L.P.

By: /s/_____
Murphy S. Klasing, # 00791034
Sarah W. Langlois, # 24056503
1221 McKinney, Suite 3200
Houston, Texas 77010
(713) 615-8536
(713) 615-8585 Fax
email: mklasing@mcginnislaw.com;
slanglois@mcginnislaw.com

Attorneys for Defendants Allied Home Mortgage Capital Corp. and The Yellow Sign Company

[certificate of service omitted]

APPENDIX J

IN THE DISTRICT COURT
TARRANT COUNTY, TEXAS
236TH JUDICIAL DISTRICT

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 236-231317-08

[March 5, 2009]

LARRY CORRALES	)
	)
vs.	)
	)
ALLIED HOME MORTGAGE CAPITAL CORP., and THE YELLOW SIGN COMPANY	)

DEFENDANTS' AMENDED MOTION TO TRANSFER VENUE, FIRST AMENDED ANSWER SUBJECT THERETO, AND MOTION TO COMPEL ARBITRATION

On the 5th day of March, 2009, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Tom Lowe, Judge Presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by computerized stenotype machine.

[p.2] **APPEARANCES**

Ms. Susan Hutchison
SBOT NO. 10354100
Foreman, Lewis & Hutchison
611 S. Main #700
Grapevine, Tx. 76051
Telephone: 817-336-5533
Attorney for Plaintiff

Ms. Sarah Weber Langlois
SBOT NO. 24056503
Mr. Murphy Klasing
SBOT NO. 00791034
McGinnis, Lochridge & Kilgore, L.L.P.
1221 McKinney Street, Suite 3200
Houston, Tx. 77010
Telephone: 713-615-8547
Attorney for Defendants

[p.3] *THE COURT*: All right. This is Cause No. 236-231317-08; *Larry Corrales versus Allied Home Mortgage Capital Corporation, et al.* Before the Court is Defendants' Motion to Transfer Venue.

You may proceed.

MS. LANGLOIS: Thank you.

THE COURT: Ms. Langlois.

MS. LANGLOIS: Thank you.

THE COURT: If you will pull that microphone near you. It's not real good, and -- but it's the best we have.

MS. LANGLOIS: Thank you. Is that better?

THE COURT: That's much better, thank you.

MS. LANGLOIS: Judge, I'm Sarah Langlois. Judge, again we're here today on a Motion to Transfer Venue. Defendants assert that this case should be transferred to Harris County for several reasons, first of which, CPRC Section 16.035 mandates that a person that's contracted in writing and expressly named a county or a definite place, then the suit can be brought in one of two places: Either the county named in the writing; or second, the county in which the defendant has his domicile. And both of those instances, venue needs to be transferred to Harris County. The plaintiff and Allied agreed that any dispute would be brought to -- in Houston, Harris County, Texas.

[p.4] And if you would turn in the exhibit notebook in front of you, it's Exhibit No. 1, which is the employment agreement. And not once in the employment agreement is Houston, Harris County, Texas named as the -- as a venue. The first place is within the arbitration clause, which is on Bates labeled Allied/Corrales number 4. And specifically says that the case -- any -- any dispute shall be subject to arbitration in the city of Houston, Texas.

Additionally, on the very next page on Bates label number 5 under applicable law, the contract explicitly states that each party consents to the personal jurisdiction of any state or federal court in the city of Houston, Harris County, Texas.

For these -- both of these reasons, Judge, the case should be transferred to Harris County. Plaintiffs want to argue that this agreement does not apply to this dispute because of the scope of the agreement, which is laid out on Bates label number 1. We have three arguments with regards to Plaintiff's -- to address Plaintiff's argument. The first is that --

THE COURT: I'm sorry. I'm sorry. Bates label number 1?

MS. LANGLOIS: That's correct where --

THE COURT: Where -- where --

MS. LANGLOIS: -- it says, Scope of employment.

[p.5] *MR. KLASING:* The first page of -- of tab 1, Judge.

THE COURT: Oh, thank you. Okay.

MS. LANGLOIS: And -- and Plaintiffs assert, Judge, that because of the scope of employment that's laid out in this employment agreement that therefore this employment agreement, including the arbitration clause and the mandatory venue provision -- provisions do not apply to this case.

Again, we have three arguments to address plaintiff's contention. First is that this contract absolutely applies to the dispute before the Court. The Second is that a savings clause that's also included in this contract mandates that even if the scope of employment provision -- if the Court found the scope of employment provision was not applicable in this

dispute, then that provision would basically be severed out of all other provisions, including the arbitration clause, and the mandatory venue provision would be applicable.

And third, Judge, the reason that Plaintiff assert that this -- that this agreement does not apply to this dispute is because they contend -- or excuse me, he contends that he was fired from his position at Yellow Sign and not by Allied. And this agreement is between Allied and the Plaintiff; however, Yellow Sign's going to be dismissed from this case eventually anyway because of two reasons. First of [p.6] all is plaintiff failed to exhaust its administrative remedies against Yellow Sign; and second, Yellow Sign will be dismissed because the Plaintiff can't sue Yellow Sign under the Texas Commission on Human Rights Act because they don't meet the definition of employer.

Going back to the -- to my first argument, Judge, that the contract at issue applies to this dispute. Plaintiff admits in his affidavit that quote, I was hired by Allied as vice-president of Affiliated Yellow Sign Company, end quote. And if I can go through with you, Judge, some of these exhibits that we brought with us today, some of which were -- have been attached to our motion to transfer venue and to our reply to Plaintiff's response. And others we're just going to use as demonstratives.

But behind tab number 2, as you can see, Plaintiff was paid by Allied. These are several pages of the payroll register, and it clearly shows that Allied is the company that paid Plaintiff even after he took on the additional role as vice-president of Yellow Sign.

Under the third tab, we have several personnel action forms. And you can see that in the very first one Bates label Allied 32, Plaintiff was in fact terminated from Allied. And the Bates label 33, again another Allied personnel action form showing that Plaintiff's pay was reduced to his old salary. And then particularly on Allied 35, we [p.7] can --

MR. KLASING: Last page of that tab --

MS. LANGLOIS: The last --

MR. KLASING: -- by the way, sir.

MS. LANGLOIS: We can see that when Plaintiff took on the new role of vice-president of Yellow Sign, he was still employed by Allied, and therefore still subject to an employment agreement. And this page shows that his -- he only took on a new job title, which is vice-president of For Sale By Owner, which is the program sponsored by Yellow Sign and by Allied.

THE COURT: I thought you just said new role?

MS. LANGLOIS: I'm sorry?

THE COURT: I thought you just said new role?

LANGLOIS: His new job -- it was another job duty in addition to his job duty as branch manager with Allied, that's correct.

THE COURT: Was he still a branch manager?

MS. LANGLOIS: He was still a branch manager, as page 30 -- Bates label number 35 shows, Judge.

Specifically says, Larry will be the branch manager at Branch 1651, as well as the VP of For Sale By Owner for which he will be paid $50,000 per year.

Even after, Judge, that Plaintiff's branch was in fact closed and he continued working for Allied in the [p.8] position of its vice-president, Allied still paid his -- still paid his salary, still -- his supervisor was an Allied employee. As tab 4 shows, all of his W-2s showed that Allied Home Mortgage is -- was his employer. And indeed, Judge, whenever he -- the basis of his claim is a disability discrimination claim based upon the fact that he had to have brain surgery. When he filled out his leave of absence forms, and which is on tab 5, when he filled out his leave of absence request on tab six and his FMLA certifications, that was all done through Allied.

And finally, Judge, Yellow Sign does not have any employees. Not a single employee. It was clear throughout this entire time that Allied -- that Plaintiff was employed by Allied. And therefore, but for this employment agreement, Plaintiff wouldn't have been employed.

Secondly, Judge, even if you were to find that due to the fact of this -- the scope that's specifically laid out in the employment agreement, that you find that this current dispute does not fall within that scope, the savings clause mandates that you still apply the arbitration provision and the applicable law and mandatory venue provision.

For example, if we can go to the employment agreement, which again is at tab 1. On page 6 where the savings clause is, it states: If any provision --

THE COURT: I've – I've read it.

[p.9] *MS. LANGLOIS:* You've read it. Okay.

Therefore, Judge, we believe that the application of the scope provision to this particular circumstance, if you find that that's inapplicable, then again, we still believe that the arbitration provision and the mandatory venue provision nevertheless prevail.

And with regards to the arbitration provision, Judge, we've also filed a motion to compel arbitration subject to our motion to transfer venue. And I just would like to point out to the Court, as we have in our -- in our motion, then in our reply, that the arbitration clause at issue is a broad arbi -- or arbitration clause stating that any dispute, controversy, claim or difference between Allied and the plaintiff which directly or indirectly relates to or arises out of this agreement shall be subject to arbitration.

At a minimum, this case indirectly arises out of this agreement. We -- we contend that it directly arises out of the employment agreement between Allied and Plaintiff. However, at a bare minimum it absolutely indirectly arises out of the agreement. Because again, but for the employment agreement, Plaintiff would not have been employed, period.

And, Judge, we can take up the arbitration clause a little bit more in the event that you deny our motion to transfer.

THE COURT: All right. Ms. Hutchison.

[p.10] *MS. HUTCHISON:* Judge, I think we're sort of mixing apples and oranges a little bit in -- in -- throughout this argument.

Larry went to work for Allied as a branch manager. And in that position, they drafted an employment agreement that addressed that relationship. And it specifically says branch manager, it talks about the scope, lays out all his duties. Well, he then --

THE COURT: Could we get some dates of this --

MS. HUTCHISON: Yes, sir. Initially --

THE COURT: I didn't -- just a second.

MS . HUTCHISON: Okay.

THE COURT: I didn't see, at least on the signature page -- oh, I have December of 2002.

MS. HUTCHISON: Of 2002 was the effective date of that agreement.

In 2004, Larry began working for a company that Allied created called the Yellow Sign. And Allied, I mean, it's -- it is actually our position that Allied was also his employer, so our -- we are not making the argument that this doesn't apply because they weren't his employer. So may -- maybe there was a little miscommunication on that part -- on that part of it. Because obviously Allied has to be his employer. Yellow Sign didn't have any other employees. They wouldn't be an employer under the law, so we're not making [p.11] that argument.

What we're saying is that the position of vice-president of the Yellow Sign was a completely different agreement, with completely different parties, different duties. It fell nowhere within the scope of this written agreement. Not in the job duties, not in the compensation, not in the parties that were, you know -- that were subject to it, not in the provisions -- nowhere does it fall in this agreement. And to say --

THE COURT: Was there a written agreement with Yellow Sign?

MS. HUTCHISON: No, sir. There's no written agreement.

But to say that that relationship falls in this -- that he wouldn't be employed as the vice-president of Yellow Sign without this agreement doesn't even make any sense because this doesn't have anything to do with that relationship. And the branch manager, that branch was actually closed. So at the time he was fired, he was not acting as a branch manager. And he was not fired from his position as branch manager.

What happened was, he -- in November of '06, he was diagnosed with a brain tumor. He went off for a while. He came back, part of what he was doing for Yellow Sign is he created this Web site for people that were affiliated with [p.12] Allied to go to and get information on how to do the For Sale By Owner program, which was a Yellow Sign For Sale by Owner. And when he came back, he was updating that information, changing it around and took some of the -- some of the information off the Web port. That had nothing to do with branch manager jobs. That was purely 100 percent vice-president of Yellow Sign job.

Well, they got mad because they alleged that -- it's our contention that it was protectural, but they alleged that he shouldn't have taken that information off the Web site, and they fired him as soon as he came back from his disability leave. That has nothing to do with a position as branch manager.

And the interesting thing to me about this agreement is, it's basically an employment agreement with an arbitration provision in it. And when I was researching arbitration law after I first started encountering it in my great frustration in that it's in all of these employment agreements. I mean, you've just been putting them in employment agreements, and if you want to keep working, you've got to be subject to arbitration. And you can imagine, that frustrates me a lot.

But especially because, you know, the courts have come out with this rule that favors arbitration, and the federal courts have said arbitration is favored, until I [p.13] realized something; and that is that you don't even get to that analysis, you don't even get to the arbitration analysis or the -- you know, that -- that you got to interpret it favorably towards arbitration until you first decide under state law whether or not there is an existing contract. And if there's not an existing contract, you don't even have to consider how favorable the court should weigh arbitration.

And there is not an existing contract that governs the actions in this case because they didn't fire him from the job as a branch manager. And if there's not a contract that governs the relationship between him -- him in his position as vice-president of Yellow Sign and Allied, then there's not any contract to interpret.

I don't think there's any dispute that he was working out of his home in Arlington. He was in Tarrant County at the time of his termination. So without the application of this agreement, then certainly venue is appropriate here. So I don't think that that's -- there's any dispute as to that. I think that the position is that if this agreement doesn't govern, venue's fine here. If this agreement does govern, then it states that venue should be in Harris County. So, I mean, it's just simply a matter of whether or not this contract governs that relationship.

It's my position that under -- under Texas contract law, they drafted it, they created it. It needs to [p.14] be interpreted strictly against them. There is -- there's nothing in here that says, If you get some other job with Allied or if you take some other position with an affiliated company, then the provisions of this contract are going to govern. There's nothing in here in this agreement that says it's going to govern anything other than him in his job as a branch manager. And he wasn't -- he wasn't working as a branch manager at the time of his termination, so the contract doesn't -- doesn't govern. It's your basic contract law.

THE COURT: Your response?

MS. LANGLOIS: First of all, Judge, as proved by our affidavit, which is Exhibit 1 to our -- and it's not Exhibit 1 in your notebook, it's actually Exhibit 1 to the actual motion to transfer venue. It explicitly says that Mr. Corrales was employed by Allied from December 13, 2001 until the date he was fired as a branch manager. For all intents and purposes, Allied considered the Plaintiff a branch manager, even though his branch had closed. Indeed all of his expense

reports were filled out, including he put his branch number on all the expense reports.

MR. KLASING: Those are Exhibit 10, Your Honor, by the way, the expense reports.

MS. LANGLOIS: But he was absolutely fired from his position as branch manager.

Additionally, Judge, I think you can't -- you [p.15] have to read the contract as a whole, and I think the arbitration clause clearly says any dispute arising out of or relating to the agreement which directly or indirectly. I mean, there again, I think at a bare minimum this dispute indirectly arises out of the Plaintiff's contract with Allied.

MS. HUTCHISON: The only --

THE COURT: You may --

MS. HUTCHISON: -- the only --

THE COURT: -- do you want to respond to that?

MS. HUTCHISON: The only thing I wanted to add, Judge, is I think -- I don't think there was anything new in there. But the only thing I wanted to add is that the -- one of the ways you can tell that -- and -- and Larry submitted an affidavit that outlines the complete difference in what he was doing as the vice-president from what he was doing as the branch manager.

And one of the things that he laid out was his pay scale -- his pay was totally different. He wasn't being

paid -- as a branch manager, he worked off of a commission. And as the vice-president, he had a totally different pay system. And when he was fired, he wasn't working off commission, he wasn't operating as a branch manager. So that was just one more piece of evidence in Larry's affidavit that distinguishes what he was doing from the agreement that they are attempting to put before the Court.

[p.16] *MR. KLASING:* Your Honor, if I could just say something real quick about that. The affidavit --

THE COURT: Sure.

MR. KLASING: -- also points out, Your Honor, that when was --

THE COURT: Are you talking about Mr. Corrales's --

MR. KLASING: Mr. Corrales --

THE COURT: -- affidavit?

MR. KLASING: Yes, Mr. Corrales's affidavit.

It points -- he points out in his own affidavit that when he was asked to take on the role of the Yellow Sign business, he was still a branch manager at that time. It wasn't a severance of one thing and a start of a new. And that's why we allege, and in fact stated in our EEOC sworn affidavit and other things, that as our -- our witnesses have said that it was an additional role. It wasn't a -- a new job with a new company.

He actually says, Your Honor, at paragraph 15 of his agreement that he was hired by Allied as vice-president, national manager of the affiliated Yellow Sign. He says he was hired by Allied to do that role. And that's in his own affidavit. And in fact that controverts their original petition which doesn't indicate that's the position they were taking in the beginning of this lawsuit. And so I just point [p.17] that out to -- to make a point that there is no -- there's not a single document or really a single anything that tells this Court that Yellow Sign Company was the one who hired him as a -- as a separate employee of that -- of that company.

And there's really nothing to controvert the fact that that company had no employees, including him. He was not an employee. He never received any benefits from that company; he didn't receive a single dollar from that company. And that's why we believe it relates to his employment as a Allied employee.

THE COURT: Ms. Hutchison, do you have anything more you want to say?

MS. HUTCHISON: Nothing additional, Your Honor.

THE COURT: I am looking at Mr. Corrales's affidavit. Where was the language, Mr. Klasing --

MR.. KLASING: Paragraph --

THE COURT: -- that you just --

MR. KLASING: Paragraph 15. It's on page 6 --

THE COURT: -- 15?

MR.. KLASING: Yeah, page 6 of his affidavit, paragraph 15. After he -- after he goes through all of his job duties --

THE COURT: I see.

MR. KLASING: As you can see, yeah.

THE COURT: I thought you were indicating that [p.18] he had said he was originally hired. But I don't think that's what it says.

MR. KLASING: No, I -- I just read it, Your Honor. It says he was hired by Allied as vice-president, national manager of the affiliate, Yellow Sign. And that -- and that --

THE COURT: I interpreted that to mean that sometime subsequent to December of 2002, whenever he started serving as. . .

MR. KLASING: Yes. I didn't mean to interpret -- to imply anything different, no. But my point is that even after he started that, in the middle it was Allied that hired him for this additional role. It wasn't a different company; it wasn't a different entity. It was the same place he was working. He was just given new duties. And, you know, the arbitration clause in the agreement doesn't say it's subject to the scope, nor does the scope say it's subject to the arbitration clause. And there's nothing that -- that ties them together, other than the fact they're in the same document.

(Brief pause in proceedings.)

MR. KLASING: And Your Honor, I don't want to interrupt you, but need to say, you know, procedurally we didn't argue necessarily here on our motion to compel arbitration, although it's also set today because --

[p.19] *THE COURT:* I understand, it --

MR. KLASING: -- cart before the horse.

THE COURT: I understand.

It's my understanding from Mr. Corrales's affidavit that the branch managing position effectively ended in February of 2006, is that right, when it closed the doors?

MR. KLASING: Your Honor, that is what our records show in terms of the branch having any -- closing any loans.

THE COURT: Okay.

MR. KLASING: All of his expenses were still being run through the branch as if it was operating.

THE COURT: Well, I understand.

MR. KLASING: But the branch itself is not closing loans after that date. I verified that with the company.

THE COURT: Motion to transfer is denied. I'll hear your motion to compel arbitration now.

MS. LANGLOIS: Thank you, Judge.

And we've already sort of gotten into the motion to -- or to compel arbitration. But again, a broad arbitration clause is at issue here, again stating that any dispute, indirect -- directly or indirectly arising from or relating to the agreement shall be subject to arbitration. Employment agreements that include arbitration clauses have [p.20] repeatedly been upheld by courts. And we believe that the arbitration clause at issue here absolutely applies to this dispute.

To address Plaintiff's arguments with regard to the arbitration clause, he asserts two. First that there's -- it's lacking consideration; second, that the agreement is unconscionable.

With regards to the lack of -- lack of consideration, Texas law is clear that the mutual promise to agree to arbitrate is valid consideration. The Texas Supreme Court has held that numerous times. And the case cited by the Plaintiffs, which is *In Re: C & H News*, they cite that case for the proposition that the arbitration agreement lacks consideration. In that case, the arbitration agreement was not supported by consideration because the agreement allowed the employer to unilaterally amend the types of claims subject to arbitration. There is no such unilateral amendment provisions in this particular case. Therefore, the arbitration agreement is supported by valid consideration.

With regards to Plaintiff's unconscionability argument, to prove -- Texas law is clear that to prove unconscionability, it's the Plaintiff's burden of proof to come forward with evidence of both procedural unconscionability and substantive unconscionability. Here Plaintiff has not even argued, much less provided

evidence of [p.21] procedural unconscionability, but only says that substantive unconscionability exists. For that reason, because Plaintiff has failed to argue, much less submit evidence of both types, the Court should find that arg -- argument meritless.

With regards to subs -- substantive unconscionability, however, again Plaintiff fails to cite a single, legal authority to support the proposition that the waiver of costs, expert fees and attorney's fees renders the agreement unconscionable. Texas courts have repeatedly found that limitations are remedies and arbitration agreements are permissible.

And without waiving our argument that we believe that the limitation of remedies contained in this arbitration clause is per -- are permissible, even if the Court were to find that the waiver of costs and attorney's fees was unconscionable, the correct avenue, then, is to sever that provision and nevertheless proceed to arbitration.

MR. KLASING: And in fact, Your Honor, I've already agreed, I think, with Ms. Hutchison previously that if we go to arbitration, that we would follow whatever the Triple A rules are with employer/employee arbitration with regard to costs and expenses. So I think -- I think we had shared dialogue about that through e-mail as well before this suit was filed. And of course, we would do that.

MS. HUTCHISON: Your Honor, with respect to the [p.22] arbitration provision, the first part of my argument is the same as with respect to the -- to the motion to transfer venue. In order to even interpret the arbitration clause, there first has to be a valid

contract, an existing contract. And -- and there isn't one. If they got past that point, which I don't think they can, then the Court evaluates the unconscionability and the consideration.

Our arguments there were simply that the -- the agreement does not -- the language of the agreement says that the employee agrees to arbitrate any claims or disputes. It doesn't say that the employer makes that same promise. From that standpoint, we were arguing lack of consideration from unconscionability There are specific cases. The -- the case out of the Texas Supreme Court in August of '08, *In Re: Poly-America*, does say that if you waive substantive rights, statutory rights, including remedies, that that's an unconscionable thing that could invalidate that provision of the contract. It also does say you can severe that out --

THE COURT: Doesn't Mr. Klasing's stipulation cure that?

MS. HUTCHISON: Probably -- I think it probably does, certainly because of the language that that can be severed out. So I think that stipulation probably would address that. But as far as the lack -- the failure of [p.23] consideration, we still have that claim. Those are sort of secondary issues, in my opinion, behind the main issue, which is there -- there isn't a valid existing agreement in the first place.

THE COURT: Do you have anything else?

MS. LANGLOIS: Just one more thing, Judge.

With regards to Plaintiff's argument that the employment agreement does not exist, we would just like to mention that when the Plaintiff filed his EEOC charge, he did so against Allied, not against Yellow Sign. Yellow Sign is not mentioned anywhere in the EEOC charge.

And again, Judge, the -- the broad arbitration clause at issue, in addition to the -- to the general language which I've cited numerous times to you, the arbitration clause itself also says that any and all causes of action that involve or relate to applicable state or local laws for discrimination shall be subject to arbitration. That's exactly the case that we have here. Plaintiff has not denied that he was not employed -- or excuse me. Plaintiff has not denied that he was employed by Allied. This is the only agreement he had with Allied concerning his employment -- employment.

THE COURT: The Court's going to deny the motion to compel arbitration. It appears to this Court that the -- for largely the same reasons that I denied your motion to [p.24] transfer venue. It appears to me that the part that was part of the -- the relationship between the parties evolved to a point where it would not be appropriate to enforce this contract against the Plaintiff.

So Ms. Hutchison, if you would prepare the orders.

MS. HUTCHISON. Yes, sir.

(END OF PROCEEDING)

DISCLOSURE

Note: Supreme Court rule adopted and promulgated in conformity with Chapter 52 of the Government Code, V.T.C.A.

Please be advised that pursuant to the Texas Government Code with regard to disclosure, I, to the best of my knowledge, have no existing or past financial, business, professional, family, or social relationships with any of the parties or their attorneys which might reasonably create an appearance of partiality.

/s/

Susan Haines, Texas CSR #753
Expiration Date: 12/31/10
Official Court Reporter, 236th District Court
Tarrant County Justice Center
401 W. Belknap St., 7th Floor
Fort Worth, Texas 76196
Telephone: (817-884-1127)

STATE OF TEXAS

COUNTY OF TARRANT

I, Susan Haines, Official Court Reporter in and for the 236th District Court of Tarrant County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $161.50 and was paid by Defendants.

/s/
Susan Haines, CSR
Texas CSR 753
Official Court Reporter
236th District Court
Tarrant County, Texas
401 West Belknap, 7th Floor
Fort Worth, Texas 76196
Telephone: 817-884-1127
Expiration: 12/31/2010